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Law Reform Commission of Canada
Commission de réforme du droit du Canada

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Canada

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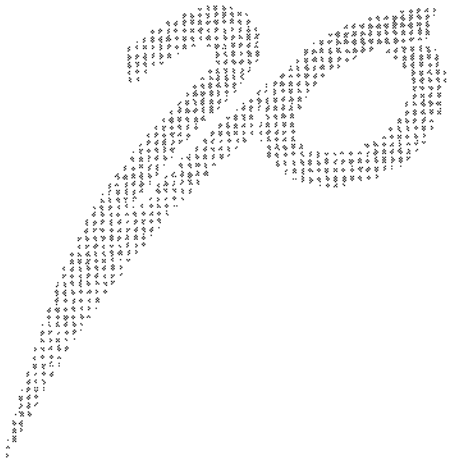

Ottawa

The Honourable A. Kim Campbell,
P.C., M.P.,
Minister of Justice and
Attorney General of Canada,
Ottawa, Ontario

Dear Ms. Campbell:

In accordance with section 17 of
the *Law Reform Commission Act*,
I submit herewith the Twentieth
Annual Report of the Law Reform
Commission of Canada for the
period June 1, 1990 to May 31, 1991.

Yours respectfully,

Gilles Létourneau, Q.C.
President
Law Reform Commission of Canada

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Legislative Achievements

The Commission prepares a framework document entitled ***Toward a New General Part for the Criminal Code of Canada*** *to assist a subcommittee of the House of Commons Standing Committee on Justice and the Solicitor General in its consideration of the General Part of the* ***Criminal Code.*** *(See page 8.)*

Publications

Report 33, ***Recodifying Criminal Procedure,*** *is tabled in Parliament. Based on years of study and consultation, this report represents the first step of a process which will see the production of a new Code of Criminal Procedure presented to Canadians.* *(See page 28.)*

Ongoing Work

At the request of the Minister of Justice, the Commission undertakes a comprehensive study of criminal justice issues as they relate to Aboriginal and multicultural peoples in Canada.

A report to Parliament on the current refugee process is in preparation following an empirical study and extensive consultations. *(See page 37.)*

Co-operation with other Institutions

The Commission presents its findings on the legal aspects of medically assisted procreation to the Royal Commission on New Reproductive Technologies. *(See page 55.)*

TWENTY YEARS OF SHAPING CANADA'S FUTURE

THE LAW REFORM COMMISSION OF CANADA WAS CREATED BY THE *Law Reform Commission Act* IN 1971 AS A PERMANENT AND INDEPENDENT BODY TO REVIEW ON A CONTINUING BASIS ALL THE FEDERAL LAWS OF CANADA AND TO MAKE RECOMMENDATIONS FOR THEIR IMPROVEMENT, MODERNIZATION AND REFORM. IT IS MANDATED BY PARLIAMENT TO DEVELOP NEW APPROACHES TO THE LAW THAT ARE IN KEEPING WITH AND RESPONSIVE TO THE CHANGING NEEDS OF MODERN CANADIAN SOCIETY AND TO REFLECT IN ITS RECOMMENDATIONS THE DISTINCTIVE CONCEPTS AND INSTITUTIONS OF THE COMMON LAW AND CIVIL LAW LEGAL SYSTEMS IN CANADA.

AS THE COMMISSION CELEBRATES ITS 20TH ANNIVERSARY, IT LOOKS BACK ON AN IMPRESSIVE LIST OF ACCOMPLISHMENTS NOT THE LEAST OF WHICH ARE LEGISLATIVE. BUT THE LAW REFORM COMMISSION OF CANADA IS SO MUCH MORE THAN A BODY WHICH HAS MADE A NUMBER OF RECOMMENDATIONS TO PARLIAMENT TO IMPROVE CANADIAN LAWS. IT HAS UNDERTAKEN A VAST AMOUNT OF RESEARCH IN A VARIETY OF AREAS RELATED TO LAW, AND FROM THIS RESEARCH IT HAS GENERATED 33 REPORTS, 63 WORKING PAPERS, 78 PUBLISHED STUDY PAPERS AND OVER 300 UNPUBLISHED BACKGROUND PAPERS. LAWYERS, STUDENTS AND LAYPERSONS ALIKE HAVE USED THESE DOCUMENTS FOR PRESENTATION OF LEGAL ARGUMENTS, AS LEARNING TOOLS AND FOR THE LUCID AND WELL-WRITTEN EXPLANATIONS OF COMPLEX LEGAL CONCEPTS THEY

CONTAIN. SOME PUBLICATIONS, SUCH AS *Our Criminal Law, The Meaning of Guilt: Strict Liability, The Principles of Sentencing and Dispositions* AND THE *Report on Evidence* HAVE BECOME CLASSICS IN THEIR FIELDS. THE COMMISSION'S LEGAL RESEARCH HAS BEEN RECOGNIZED FOR ITS EXCELLENCE THROUGHOUT THE NATIONAL AND INTERNATIONAL LEGAL COMMUNITIES AND HAS STIMULATED SCHOLARS TO WRITE ABOUT ITS HISTORY, FUNCTION AND PHILOSOPHY AND TO SUBJECT ITS WORK TO CRITICAL ANALYSIS. MANY OF ITS PAPERS HAVE BEEN TRANSLATED INTO OTHER LANGUAGES AND HAVE SERVED AS MODELS FOR LAW REFORM IN OTHER COUNTRIES.

IN THE LEGISLATIVE AREA, THE COMMISSION'S WORK HAS HELPED TO SHAPE THE SECTION ON EVIDENCE IN THE *Canadian Charter of Rights and Freedoms*. ITS RECOMMENDATIONS HAVE BEEN EMBODIED IN VARIOUS SUBSTANTIVE AND PROCEDURAL AMENDMENTS TO THE *Criminal Code* OF CANADA INCLUDING SEXUAL ASSAULT LAWS, SENTENCING, THE LAW OF ARSON AND VANDALISM, ASSISTANCE TO VICTIMS OF CRIME, THE LAW OF SEARCH AND SEIZURE, AND THE LAW RELATING TO PRE-TRIAL CONFERENCES AND MOTIONS. ITS RECOMMENDATIONS HAVE ALSO BEEN INSTRUMENTAL IN CHANGING FEDERAL EXPROPRIATION AND GARNISHMENT LAWS WITH RESPECT TO MONIES PAYABLE BY THE CROWN. ITS WORK HAS INSPIRED CHANGES IN THE *Divorce Act*, THE *Federal Court Act* AND HAS CONTRIBUTED TO THE DRAFTING OF CERTAIN SECTIONS OF THE *Canadian Environmental Protection Act*.

THE COMMISSION HAS ALSO MADE A CONTRIBUTION TO CANADIAN CASE LAW. ITS REPORTS, WORKING PAPERS AND STUDIES HAVE BEEN CITED IN OVER 255 CASES, 48 OF WHICH ARE DECISIONS OF THE SUPREME COURT OF CANADA. COURTS HAVE USED THESE DOCUMENTS AS SOURCES FOR THE HISTORY AND RATIONALE OF PARTICULAR LAWS AND TO ASSIST THEM IN THEIR LEGAL REASONING IN AREAS SUCH AS FAMILY LAW, CRIMINAL LAW AND PROCEDURE, EVIDENTIARY QUESTIONS, ADMINISTRATIVE LAW AND STATUTORY INTERPRETATION. THE CONTRIBUTION MADE BY THE COMMISSION TO THE INTERPRETATION AND APPLICATION OF THE *Charter* TO THE CRIMINAL LAW IS A PARTICULAR SOURCE OF PRIDE.

The Commission has influenced practical areas of the law as well. For example, in 1985, it assisted the Halton Regional Police Force with the establishment and evaluation of their Taped Interviewing Project (TIP), a pilot project designed to gather data on the taping of police interviews. Its work on discovery has helped to alter pre-trial disclosure practices, its work in family law has contributed to the creation of unified family courts in certain provinces and its work in administrative law has influenced the practices and operations of various federal agencies.

The Commission has never lost sight of its obligation to engage in a dialogue with members of the public and to inform them on issues of law reform and they in turn assist the Commission in its work. Documents are distributed free of charge and the public is invited to comment on the recommendations contained therein. Over the years several informal public meetings have been held across the country. Information kiosks are set up at various conferences. The Commission has prepared videotapes, pamphlets, information sheets and questionnaires on law reform topics of interest, and members and research personnel undertake as many public speaking engagements as time and resources permit.

At a reception honouring the Commission's twentieth anniversary, President Létourneau characterized these achievements as "twenty years of shaping Canada's future."

Gilles Létourneau, President.

A NEW CODE OF CRIMINAL PROCEDURE FOR CANADA

ON MARCH 7TH, 1991, REPORT 33, *Recodifying Criminal Procedure* WAS TABLED IN PARLIAMENT BY THE MINISTER OF JUSTICE. THIS REPORT REPRESENTS THE FIRST INSTALMENT IN THE PRODUCTION OF A NEW CODE OF CRIMINAL PROCEDURE TO BE CONFERRED ON THE CANADIAN PEOPLE. THE TABLING OF THIS DOCUMENT MARKS AN IMPORTANT EVENT IN CANADIAN LEGAL HISTORY. NEVER BEFORE HAS PARLIAMENT BEEN PRESENTED WITH A PROPOSED CODE OF CRIMINAL PROCEDURE AS COMPREHENSIVE AND AS COMPLETELY MADE-IN-CANADA.

The original *Criminal Code* of 1892 while an impressive achievement for its time was a far from perfect instrument. In the nearly one hundred years since its introduction the picture has not measurably brightened. Changes and amendments reflecting significant societal developments have been made, but for the most part, the present *Code* remains remarkably unaffected. Procedural provisions are scattered throughout the more than eight hundred sections and are difficult to locate and understand. Little thought is given to principle or governing philosophy. These defects are apparent to even the casual student of criminal law. Procedural law is virtually inaccessible to everyone.

THE CHALLENGE WILL BE FOR PARLIAMENT TO TAKE UP THE ENORMOUS TASK OF TRANSFORMING THIS ADVISORY WORK INTO THE EVERYDAY LAW OF THE LAND. AND IT SHOULD NOT HESITATE TO DO SO.

Mr. François Handfield, Mr. Stanley A. Cohen, Dr. Gilles Létourneau and Mr. John P. Frecker at a press conference held after the tabling of Report 33.

The proposed code is the product of years of intense study and consultation. It is designed to be comprehensive and accessible and is organized around the basic governing principles of fairness, efficiency, clarity, restraint, accountability, participation and protection. Virtually all of the relevant law in a given area is grouped together. While it builds on previously published work by the Commission it also takes into account criticisms that have been communicated to it over the years by the public and by special consultants. It also incorporates and responds to changes in the law that have occurred either through new legislation or common law decisions by the highest courts.

While the common law will not be eliminated with the introduction of a new code, much of the piecemeal, case-by-case development of the law will disappear, or at least be significantly constrained.

Genuine legislative reform is not only necessary but inevitable. The courts cannot fill the vacuum created by their decisions nor can they remedy the shortcomings of the legislation they are called upon to interpret.

The production of a code such as this is unprecedented in the common law world. The challenge will be for Parliament to take up the enormous task of transforming this advisory work into the everyday law of the land. And it should not hesitate to do so. The Commission is confident that if our legislators do prove equal to this challenge, Canada will be blessed with a code that is in harmony with its constitution and responsive to its present and future needs.

LEGISLATIVE ACHIEVEMENTS

Parliamentary Subcommittee on the General Part

In preparation for a study of the General Part of the *Criminal Code* to be undertaken by a subcommittee of the House of Commons Standing Committee on Justice and the Solicitor General, the Commission, in conjunction with officials of the Department of Justice, has prepared a framework document entitled *Toward a New General Part for the Criminal Code of Canada.* The document, which is intended to facilitate the work of the subcommittee, summarizes a considerable body of law and a large number of recommendations which have been made by the Commission and other organizations involved in the reform of the criminal law. The document canvasses the history and functions of a General Part, explains why a new one is necessary and outlines some of the principles and concepts associated with interpretation, application, liability, defences, exemptions, involvement in crimes and territorial jurisdiction.

The subcommittee is expected to undertake its study during the coming year. It will hold meetings and receive submissions in order to benefit from the opinions and views of as many Canadians as possible. It will conclude its work by making recommendations to the Minister of Justice for new legislation leading to the development of a General Part for the *Criminal Code.*

The Commission has written to many organizations which, over the years, have expressed interest in various aspects of criminal law reform, informing them of the formation of the subcommittee and

inviting them to appear before it so that they might express their views on the various recommendations directly to their members of Parliament. It is gratifying to note that the response to the invitation to participate in this process has been very positive.

Joinder of Counts

Bill C-54, *An Act to amend the Criminal Code (joinder of counts)* received Royal Assent on January 17, 1991. According to the Minister of Justice, the legislation is designed to streamline the trial process by eliminating the practice of having separate trials for persons accused both of murder and another offence or offences committed at the same time as the murder. It does not however affect a judge's right to order separate trials if necessary to further the interests of justice.

In Working Paper 55, *The Charge Document in Criminal Cases* (1987), the Commission recommended that the rule in section 518 (now section 589) of the *Criminal Code* be relaxed so as to allow the joinder of the crimes of manslaughter, attempted murder or criminal negligence causing death. The Commission further recommended the joinder of any crime triable by a jury, with murder, so long as the consent of the accused were to be obtained and the court could agree that it was in the best interests of justice. The Commission believes that this amendment will result in greater efficiency in the administration of justice without causing prejudice to the parties.

Canadian Laws Offshore Application Act

The *Canadian Laws Offshore Application Act* which received Royal Assent on December 17, 1990 amends section 477 of the *Criminal Code* by broadening the application of Canadian criminal law and jurisdiction in respect of offences committed on the continental shelf of Canada and outside Canada. This amendment adopts recommendations originally put forward in Working Paper 37, *Extraterritorial Jurisdiction* (1984) that the Canadian criminal law and the jurisdiction of Canadian courts be extended so as to be applicable to offences committed in fishing zones, the continental shelf of Canada and the high sea. The Act also adopts the Commission's recommendation that the consent of the Attorney General to prosecute for an offshore crime only be required if the accused is not a Canadian citizen. These recommendations were reiterated by the Commission in Chapter 5 of its revised draft code of substantive criminal law, Report 31, *Recodifying Criminal Law* (1987).

The Act also adopts the Commission's recommendation that the consent of the Attorney General to prosecute for an offshore crime only be required if the accused is not a Canadian citizen.

British Columbia and Ontario Courts Amendment Acts

The *British Columbia Courts Amendment Act* and the *Ontario Courts Amendment Act*, which respectively came into force on July 1 and September 1, 1990, amend various federal statutes, including the *Criminal Code*, to give effect to the passage by the respective provincial legislatures of Acts which reorganize and reform the structures of the courts. In British Columbia, the reorganization consists of a merger of the County Court with the Supreme Court which has now become a court of original jurisdiction in both civil and criminal cases. In Ontario, the courts were restructured to create a two-tiered trial system from the former three-tiered system. These Acts are in keeping with the spirit of the recommendations contained in Working Paper 59, *Toward a Unified Criminal Court* (1989) which advocated the creation in each province of a single court or court division to deal with criminal matters. As an interim measure, the Commission recommended that the unification be accomplished in stages, that is, by reducing by one level the number of courts with criminal jurisdiction in provinces which at present have three levels. The provinces of British Columbia and Ontario, having reduced their courts of criminal jurisdiction from three levels to two, have thus taken the first step toward amalgamation of the criminal courts as recommended in the working paper.

THESE ACTS ARE IN KEEPING WITH THE SPIRIT OF THE RECOMMENDATIONS CONTAINED IN WORKING PAPER 59, *Toward a Unified Criminal Court* (1989) WHICH ADVOCATED THE CREATION IN EACH PROVINCE OF A SINGLE COURT OR COURT DIVISION TO DEAL WITH CRIMINAL MATTERS.

JUDICIAL DECISIONS

AS IN PREVIOUS YEARS, COMMISSION REPORTS, WORKING PAPERS AND STUDIES HAVE CONTRIBUTED TO THE DEVELOPMENT OF CANADIAN JURISPRUDENCE. JUDGES AT ALL LEVELS OF COURT HAVE USED THIS WORK TO ASSIST THEM IN THEIR LEGAL REASONING AND DECISION-MAKING.

This year, the Supreme Court of Canada referred to the work of the Commission in nine cases.

In *R.* v. *Chaulk*, [1990] 3 S.C.R. 1303, the Court considered the nature of the insanity defence as set out in section 16 of the *Criminal Code*. Chief Justice Lamer used the definition of the word "defence" in Working Paper 29, *The General Part — Liability and Defences* (1982) as "any answer which defeats a criminal charge." In discussing the difficulties posed by subsection 16(3) "specific delusions," he noted that the Commission had recommended the elimination of that section in both Working Paper 29 and in Report 31, *Recodifying Criminal Law* (1987). Madam Justice McLachlin also referred to Working Paper 29 to explain the rationale underlying section 16 of the *Code*, which "rests on the fundamental moral view that insane persons are not responsible for their actions and therefore not fit subjects for punishment." Madam Justice Wilson quoted from both the unpublished study by Patrick Healy entitled "The Presumption of Innocence in the Draft Code of Substantive Criminal Law" (1986) and Report 31, in the course of her discussion of the appropriate burden of proof for the insanity defence.

In *R.* v. *Swain*, [1991] 1 S.C.R. 933, another case involving insanity, the Court considered the constitutionality of subsection 542(2) (now section 614) of the *Criminal Code*. In examining the various aspects of that section, Chief Justice Lamer decided that the common law rule

which permits the Crown to adduce evidence of insanity over and above the accused's wishes is a denial of liberty which should not be permitted, unless the accused's mental capacity is put into question during the trial. At the same time, he enunciated a new common law rule permitting the issue of insanity to be raised following a guilty verdict. He further decided that the automatic indeterminate detention of a person found not guilty by reason of insanity, required by the section, infringes on the right to liberty although he did state that a detention of limited duration would not impair the individual's rights under the *Charter*. While he did not specifically mention any Law Reform Commission publication, his decision follows the spirit of the recommendations put forth in Report 5, *Mental Disorder in the Criminal Process* (1976). In that document the Commission recommended a careful re-examination of the sections of the *Criminal Code* dealing with mental disorder including an acknowledgement that a mentally disordered person is entitled to the same procedural fairness as any other person. Additionally, the report recommended that a finding of mental unfitness should not always lead to detention and that the *Code* should provide the trial judge with a range of possible orders rather than automatic, indeterminate detention. Madam Justice L'Heureux-Dubé, in a dissenting opinion in this case, referred to Commission recommendations regarding the detention of insane acquittees as having "merit."

Working Paper 50, *Hate Propaganda* (1986) was used by the Court in two cases which dealt with that issue. In the first case, *R.* v. *Keegstra*, [1990] 3 S.C.R. 697, the Court considered the constitutional validity of subsection 319(2) of the *Criminal Code* which prohibits the wilful promotion of hatred, other than in private conversation, towards any section of the public distinguished by colour, race, religion or ethnic origin. Chief Justice Dickson agreed with many authorities including the Commission that the law has a role to play both at the criminal and civil level in restricting the dissemination of hate propaganda. In discussing the meaning of the word "wilfully" as used in the section he stated, "I ... wholeheartedly endorse the view of the Law Reform Commission Working Paper that this stringent standard of *mens rea* is an invaluable means of limiting the incursion of s. 319(2) into the realm of acceptable (though perhaps offensive and controversial) expression. It is clear that the word 'wilfully' imports a difficult burden for the Crown to meet, and in so doing, serves to minimize the impairment of freedom of expression." As for the justifiability of the truth defense allowed under paragraph 319(3)(*a*) of the *Code*, he stated that it was attributable to the importance given

[T]HE REPORT RECOMMENDED THAT A FINDING OF MENTAL UNFITNESS SHOULD NOT ALWAYS LEAD TO DETENTION AND THAT THE *Code* SHOULD PROVIDE THE TRIAL JUDGE WITH A RANGE OF POSSIBLE ORDERS RATHER THAN AUTOMATIC, INDETERMINATE DETENTION.

to the expression of truth by Parliament as stated in the working paper.

In the second case, *Canada (Canadian Human Rights Commission)* v. *Taylor*, [1990] 3 S.C.R. 892, the Court agreed that "messages of hate propaganda undermine the dignity and self-worth of target group members and ... contribute to disharmonious relations among various racial, cultural and religious groups, ..." as affirmed by many studies in Canada including the Commission's working paper.

"[M]ESSAGES OF HATE PROPAGANDA UNDERMINE THE DIGNITY AND SELF-WORTH OF TARGET GROUP MEMBERS AND ... CONTRIBUTE TO DISHARMONIOUS RELATIONS AMONG VARIOUS RACIAL, CULTURAL AND RELIGIOUS GROUPS, ..." AS AFFIRMED BY MANY STUDIES IN CANADA INCLUDING THE COMMISSION'S WORKING PAPER.

Commission work on the jury was used by the Court in *R.* v. *Sherratt*, [1991] 1 S.C.R. 509. In that case the Court considered the proper interpretation of the challenge for cause provisions found in the *Criminal Code*. In deciding that, in this case, the accused was properly denied the ability to challenge each prospective juror for cause on the ground of partiality under paragraph 567(1)(*b*) (now paragraph 638(1)(*b*)) of the *Criminal Code*, Madam Justice L'Heureux-Dubé canvassed the history, legislative scheme, roles and functions of the modern jury. Among other things, she examined the procedures for their selection and empanelment, using both the study by Perry Schulman and Edward Meyers, entitled "Jury Selection" in *Studies on the Jury* (1979) and Working Paper 27, *The Jury in Criminal Trials* (1980) as major sources.

In *R.* v. *Hess; R. v. Nguyen*, [1990] 2 S.C.R. 906, the Court ruled that now repealed subsection 146(1) of the *Criminal Code*, "intercourse with a female under 14 years old," violates section 7 and cannot be justified under section 1 of the *Charter* to the extent that it creates an offence punishable by imprisonment without affording the accused a defence of due diligence. Madam Justice McLachlin dissented on the grounds that the section could be saved under section 1 of the *Charter* because of the protection that statutory rape offences, which exist throughout the Western world, offer to young girls and to society in general, against the consequences of premature intercourse. In emphasizing that these consequences have also been recognized in Canada, she refers to Working Paper 22, *Sexual Offences* (1978).

R. v. *B.(G.)*, [1990] 2 S.C.R. 3 dealt with the requirement for corroboration of the testimony of an unsworn child witness, as set out in now repealed section 586 of the *Criminal Code*. Madam Justice Wilson stated that in recent years, there has been considerable criticism of the rule regarding corroboration both in judicial decisions and academic commentaries and referred to Report 1, *Evidence* (1975) which expressed the view that the corroboration rule was unnecessary.

In *R.* v. *McKinlay Transport*, [1990] 1 S.C.R. 627 the Court ruled that a

demand for documents under subsection 231(3) of the *Income Tax Act* does not constitute an unreasonable seizure. Madam Justice Wilson, in analyzing the legislative scheme regulating the collecting of taxes noted that the system is self-reporting and self-assessing, using as a source the study paper by Neil Brooks and Judy Fudge entitled *Search and Seizure under the Income Tax Act* (1985).

And finally, in *R.* v. *Martineau*, [1990] 2 S.C.R. 633, a case concerning "constructive murder," the Court decided that paragraph 213(*a*) (now paragraph 230(*a*)) of the *Criminal Code* violates the *Charter*. Madam Justice L'Heureux-Dubé, in her dissenting opinion, stated, "The *Charter* is not designed to allow this court to substitute preferable provisions for those already in place in the absence of a clear constitutional violation. Such a task should be reserved for the Law Reform Commission or other advisory bodies."

Commission work in evidence, family, medical, administrative and criminal law has assisted other courts in rendering decisions in over 35 cases this year.

In *R.* v. *Lacombe* (1990), 60 C.C.C. (3d) 489, Mr. Justice Fish of the Quebec Court of Appeal used one of the alternative definitions of theft proposed in Report 31, *Recodifying Criminal Law* (1987) as he considered the *mens rea* of a fraud offence. While he admitted that proof of theft embraces a subjective component he stated, "I see no reason to extend that component, for fraud, beyond the perimeter established for theft by the phrase 'fraudulently and without colour of right'." The Commission he noted, had merged this phrase into the word "dishonestly" which it defined as follows: "To act dishonestly ... is to act in a way which would be ordinarily described as dishonest, whatever the agent's own personal morality. ... [The action] is surreptitious and underhanded and, if successful, cannot be pinned on the wrongdoer." Mr. Justice Fish adopted this approach and stated: "[H]onesty is a function of community standards and not of personal taste; the moral code of a fraudsman is not the legal test of his guilt. If he knowingly and intentionally causes dishonest deprivation to another, he cannot escape conviction because he thought that fraud is right." In another case involving the interpretation of the law of theft, *R.* v. *Milne*, [1991] 1 W.W.R. 385, the Alberta Court of Appeal decided that because property had passed from one company to another, there had been no theft. In reviewing the authorities on this issue, Mr. Justice Côté cited Working Paper 19, *Theft and Fraud* (1977).

The reverse onus provision contained in paragraph 515(6)(*d*) of the

"THE *Charter* IS NOT DESIGNED TO ALLOW THIS COURT TO SUBSTITUTE PREFERABLE PROVISIONS FOR THOSE ALREADY IN PLACE IN THE ABSENCE OF A CLEAR CONSTITUTIONAL VIOLATION. SUCH A TASK SHOULD BE RESERVED FOR THE LAW REFORM COMMISSION..."

Criminal Code requires an accused charged with an offence under sections 4 and 5 of the *Narcotic Control Act* to show cause why his detention in custody is not justified. This paragraph was ruled unconstitutional by the Quebec Court of Appeal in *R.* v. *Pearson* (1990), 59 C.C.C. (3d) 406 on the grounds that it violates the *Charter* right to reasonable bail. Mr. Justice Proulx referred to Working Paper 57, *Compelling Appearance, Interim Release and Pre-trial Detention* (1988) on the issue of the negative repercussions of pre-trial detention and on the issue of reverse onus provisions. He stated, "I can only be in agreement with the conclusions and recommendations of the Law Reform Commission which read as follows: 'The Commission, in pursuit of fairness and consistency with *Charter* values, believes that the reversal of the ordinary burdens of proof is unjustified whether at the trial or pre-trial stages of the process. Moreover, requiring the prosecutor to show cause why detention is justified does not place an onerous burden on the Crown nor does it pose a threat to public safety'." The Alberta Court of Appeal also referred to Working Paper 57 in *R.* v. *Neill* (1990), 60 C.C.C. (3d) 26, a case concerning section 525 of the *Criminal Code* which requires the court to expedite the trial of an accused detained more than 90 days. In commenting on the difficulties posed by that section, Mr. Justice Kerans stated, "Parliament has not dealt adequately with the issue .... I note that the Law Reform Commission ... has proposed further reforms."

'THE COMMISSION, IN PURSUIT OF FAIRNESS AND CONSISTENCY WITH *Charter* VALUES, BELIEVES THAT THE REVERSAL OF THE ORDINARY BURDENS OF PROOF IS UNJUSTIFIED WHETHER AT THE TRIAL OR PRE-TRIAL STAGES OF THE PROCESS. ...'

In *R.* v. *McDougall* (1990), 62 C.C.C. (3d) 174, a non-custodial father was accused of abducting his children because he failed to return them at a specified time. In dismissing the charges, Mr. Justice Doherty of the Ontario Court of Appeal stated, "Care must be taken before a prosecution is launched ... to ensure that the events complained of truly amount to criminal conduct. ... Conduct which is mean, petty, unco-operative, and spiteful is not the stuff of the criminal law. ... The contemporary view favours restraint generally in the exercise of the criminal law power. The Law Reform Commission of Canada ... puts the case for restraint eloquently ... ." He quoted extensively from Report 3, *Our Criminal Law* (1976) as follows: "Criminal law operates at three different stages. At the law-making stage it denounces and prohibits certain actions. At the trial stage it condemns in solemn ritual those who commit them. And at the punishment stage it penalizes the offenders. This, not mere deterrence and rehabilitation, is what we get from the criminal law — an indirect protection through bolstering our basic values. But criminal law is not the only means of bolstering values. Nor is it necessarily always

the best means. *The fact is, criminal law is a blunt and costly instrument — blunt because it cannot have the human sensitivity of institutions like the family, the school, the church or the community, and costly since it imposes suffering, loss of liberty and great expense. So criminal law must be an instrument of last resort. It must be used as little as possible. The message must not be diluted by overkill* — too many laws and offences and charges and trials and prison sentences. Society's ultimate weapon must stay sheathed as long as possible. The watchword is restraint — restraint applying to the scope of criminal law, to the meaning of criminal guilt, to the use of the criminal trial and to the criminal sentence."

Commission work in family law was used in two cases involving custody and access. In the first case, *Young* v. *Young* (1990), 75 D.L.R. (4th) 46, Mr. Justice Wood of the British Columbia Court of Appeal considered the rights of custodial parents and quoted from Report 6, *Family Law* (1976) as follows: "The law should be made more flexible, making custody less an all-or-nothing proposition; a judicial determination that one parent will assume primary responsibility for raising and caring for a child should not necessarily exclude the other from the legal right to participate as a parent in many other significant areas of the child's life." He then stated, "This recommendation seems to be in keeping with the spirit of the judicial opinions just referred to, and ... in my view it is consistent with what I see as the legislative intent underlying [section 16 of the *Divorce Act*, 1985]." In the second case, *Talbot* v. *Henry*, [1990] 5 W.W.R. 251, Mr. Justice Vancise of the Saskatchewan Court of Appeal rejected an application to vary a custody order and quoted Working Paper 13, *Divorce* (1975) as follows: "[The courts have held that] an existing custody order should not be lightly disturbed and there must be a material change of circumstances to justify any variation or rescission of the order. ... There must be provision for the variation and rescission of orders where circumstances have changed materially. Variation or rescission should be ordered, however, only where it is in 'the best interests of the children based on their welfare and emotional well-being'. We propose that legislation should expressly affirm this criterion. It is vital for children to have a stable environment. Once the trial judge has made an order for custody, the parents should not be free to re-open the issue because of slight changes in circumstances, whether fancied or real."

In another case involving family law, *Linton* v. *Linton* (1990), 75 D.L.R. (4th) 637, the Ontario Court of Appeal referred to both Report 6 and Working Paper 12, *Maintenance on Divorce* (1975) in a case

"THE WATCHWORD IS RESTRAINT — RESTRAINT APPLYING TO THE SCOPE OF CRIMINAL LAW, TO THE MEANING OF CRIMINAL GUILT, TO THE USE OF THE CRIMINAL TRIAL AND TO THE CRIMINAL SENTENCE."

concerning a support order. Mr. Justice Osborne noted that both documents recommend that support entitlement be viewed not in terms of status and contract, but in mainly economic terms based on the recognition of an obligation on each spouse to become self-sufficient.

"In Canada, the question of spousal testimony ... was exhaustively studied ... [by] the Law Reform Commission in 1975 ...", referring to Report 1, *Evidence* (1975).

Commission work on the law of evidence was used by the courts in two cases concerning the common law rule which prohibits spouses from testifying against each other. In *R.* v. *Salituro* (1989), 78 O.R. (3d) 68, Mr. Justice Blair of the Ontario Court of Appeal decided that irreconcilably separated spouses are competent to testify against one another in criminal proceedings. He stated, "In Canada, the question of spousal testimony ... was exhaustively studied ... [by] the Law Reform Commission in 1975 ...", referring to Report 1, *Evidence* (1975). In *R.* v. *Duvivier* (1990), 60 C.C.C. 353, Mr. Justice Farley of the Ontario Court, General Division, quoted the Commission study paper, *Competence and Compellability* (1972) which commented on the rule. "The historical reason ... was that husband and wife were regarded as one person and, since the litigant-spouse was incompetent to testify because of interest, the other spouse also was considered incompetent. When this mystical unity of husband and wife was abandoned as a scriptural fiction, the incompetency of the spouse was rationalized on the grounds that he or she had an interest in a law suit of his or her spouse. The present rationale put forward, after incompetency on the grounds of interest was abolished, is that if one spouse was compelled to testify against the other spouse, not only would it be unseemly, but it would endanger the marital relationship. Thus the rule, rather than the reflection of a clear-cut fundamental policy decision, appears to be simply a product of history. This is confirmed when we note that a fundamental policy decision surely would be based on concern not only for the married couple but for the family unit as a whole, and yet no one has suggested legislation making fathers and sons or mothers and daughters incompetent witnesses for the prosecution against the parents or children." The Court ruled that in this case, the common law relationship was not a marriage and that the witness was competent and compellable.

In *R.* v. *Ellis-Don* (1990), 1 O.R. (3d) 193, the Ontario Court of Appeal decided that the onus under statute or common law requiring an accused charged with a regulatory offence to prove the defence of due diligence violated paragraph 11(*d*) of the *Charter*. Mr. Justice Carthy dissented, stating that the burden of proving due diligence could be justified as a reasonable limit under section 1 of the *Charter* for reasons stated in Working Paper 16, *Criminal Responsibility for Group*

Action (1976). That document defined a regulatory offence as one that is not primarily concerned with values but with results, whose object is to induce compliance with rules for the overall benefit of society. The Northwest Territories Territorial Court referred to the same working paper in a sentencing case for an environmental offence, *R.* v. *Northwest Territories Power Corporation* (1989), 5 C.E.L.R. 57. Mr. Justice Bourassa quoted from the paper as follows: "[w]e must attempt to develop and use innovative methods of sanctioning corporations. ... [H]eavy reliance on fines is not the answer" as he ordered the defendant to publish an apology to the public for its crime.

Commission work was used by the courts in two cases relating to mental disorder. In the first case, *R.* v. *Steele* (1991), 63 C.C.C. (3d) 149, the Quebec Court of Appeal referred to Working Paper 14, *The Criminal Process and Mental Disorder* (1975) and Report 5, *Mental Disorder in the Criminal Process* (1976) as it considered the rationale of the fitness to stand trial rule under section 615 of the *Criminal Code*. Mr. Justice Fish quoted from Working Paper 14 as follows: "The rationale of the fitness rule ... is this: it promotes fairness to the accused by protecting his right to defend himself and by ensuring that he is an appropriate subject for criminal proceedings. The accused has the right to make full answer and defence to the charges brought against him. ... [O]ur notions of responsibility, punishment and specific deterrence are based on the accused's involvement in his trial..." and stated, "I believe it essential, in applying s. 615 of the *Code*, to bear in mind these underlying values which the section is meant to foster."

In the second case, *R.* v. *Rogers* (1990), 61 C.C.C. (3d) 481, Mr. Justice Legg of the British Columbia Court of Appeal referred to the recommendations in Working Paper 26, *Medical Treatment and Criminal Law* (1980) "that the right of a competent adult to refuse treatment be specifically recognized by the *Criminal Code*; [and] that treatment [should] not be administered against an individual's refusal unless there is a finding of incompetence or an exception recognized by law." In addition he quoted from Working Paper 14 as follows: "Probation orders with conditions of psychiatric treatment should be made only where: (1) the offender understands the kind of program to be followed, (2) he consents to the program and, (3) the psychiatric or counselling services have agreed to accept the offender for treatment." He then stated, "a probation order which compels an accused person to take psychiatric treatment or medication is an unreasonable restraint upon the liberty and

"[W]E MUST ATTEMPT TO DEVELOP AND USE INNOVATIVE METHODS OF SANCTIONING CORPORATIONS. ... [H]EAVY RELIANCE ON FINES IS NOT THE ANSWER"

security of the accused person" and ruled accordingly.

In *Commission de Protection des droits de la jeunesse* v. *T.(C.)*, [1990] R.J.Q. 1674 (C.S.), the Court referred to Working Paper 28, *Euthanasia, Aiding Suicide and Cessation of Treatment* (1982) and Report 20 published in 1983 under the same title as it considered whether to authorize the withholding of medical treatment from a handicapped child. In arriving at his decision, Mr. Justice Crépeau asked himself the question posed in Working Paper 28, "Is there any purpose in performing a minor operation on a child who, because of cardiac or other defects, has a very reduced life expectancy, is completely paralyzed from the waist down, suffers from severe convulsions and, in his short life remaining, will require a series of painful operations, with no hope of ever developing in terms of communication with the outside world?" After concluding that the answer was no, he authorized the withholding of the treatment.

In *R.* v. *Williams* (1990), 73 O.R. (2d) 102 the District Court of Ontario decided that a search warrant could be issued even though the police did not provide material to show that there was no reasonable alternative to obtaining the evidence in a less intrusive way. Mr. Justice Mossop stated that such a requirement was not unanimously accepted and in fact was not accepted by the Law Reform Commission in Working Paper 30, *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983). He further stated, "I too question how it can be that the necessity of disclosing alternative steps of obtaining the information sought by way of search warrant exists absent any statutory requirement ... ." In *Canadian Broadcasting Corporation* v. *Backman* (1991), 100 N.S.R. (2d) and 272 A.P.R. 204, the Nova Scotia Supreme Court, Trial Division considered an application to quash a search warrant to search the premises of the Canadian Broadcasting Corporation for a videotape. In response to a submission that the right to gather news is constitutionally protected, Mr. Justice Saunders referred to Working Paper 30 where he found no such right articulated. He stated, "It is to be noted that the Law Reform Commission of Canada ... does not recognize the criteria at all" and dismissed the application.

In *R.* v. *Quercia* (1990), 60 C.C.C. (3d) 380 the Ontario Court of Appeal cited a study paper prepared for the Law Reform Commission by Neil Brooks entitled *Police Guidelines: Pretrial Eyewitness Identification Procedures* (1983) as authority documenting concerns over the unreliability of eyewitness identification.

IN ARRIVING AT HIS DECISION, MR. JUSTICE CRÉPEAU ASKED HIMSELF THE QUESTION POSED IN WORKING PAPER 28, "IS THERE ANY PURPOSE IN PERFORMING A MINOR OPERATION ON A CHILD WHO ... IS COMPLETELY PARALYZED FROM THE WAIST DOWN, SUFFERS FROM SEVERE CONVULSIONS AND, IN HIS SHORT LIFE REMAINING, WILL REQUIRE A SERIES OF PAINFUL OPERATIONS, WITH NO HOPE OF EVER DEVELOPING IN TERMS OF COMMUNICATION WITH THE OUTSIDE WORLD?"

In *Cross* v. *Wood* (1990), 59 C.C.C. (3d) 561 Mr. Justice Hanssen of the Manitoba Queen's Bench referred to the study by Philip Stenning, entitled *Legal Status of the Police* (1981) for assistance in determining whether proceedings before a Law Enforcement Review Board fall under the power of the federal criminal law or the provincial responsibility of police discipline and control. In another case concerning a police inquiry, *Côté* v. *Désormeaux*, [1990] R.J.Q. 2476, the Quebec Court of Appeal acknowledged that there was an emerging obligation of speediness in administrative actions as pointed out by Patrick Robardet in an unpublished paper entitled "La jurisprudence récente en matière de justice naturelle et d'équité procédurale, un problème nouveau: la célérité administrative" (1989) but ruled nevertheless that it would have to be established that the parties in this instance were severely prejudiced by the delay in holding the inquiry to the extent that they were victims of an injustice and not just a simple delay.

In *R.* v. *Kakegamick* (1990), 63 Man. R. (2d) 62, Mr. Justice Twaddle of the Court of Appeal quoted from Working Paper 11, *Imprisonment and Release* (1975) in an appeal of the sentencing of a sexual offender. He wrote, "We are referred to the comments of the Law Reform Commission of Canada ... that prolonged imprisonment makes the eventual successful return of the offender to society more and more difficult ..." and stated "I recognize the force of what was said by the Law Reform Commission ... ." He decided however, that the offender in this case was one of "those few whose circumstances are such that their reinvolvement in horrendous crime is a matter of great likelihood."

In *R.* v. *Kowalski* (1990), 57 C.C.C. (3d) 168 the Alberta Provincial Court referred to both Working Paper 52, *Private Prosecutions* (1986) and Working Paper 17, *Commissions of Inquiry: A New Act* (1977) in deciding that the Attorney General of Alberta had the discretion to intervene and control what was initially launched as a private prosecution.

The Commission is pleased that its publications have once again played an important role in the interpretation of complex legal issues.

"WE ARE REFERRED TO THE COMMENTS OF THE LAW REFORM COMMISSION OF CANADA ... THAT PROLONGED IMPRISONMENT MAKES THE EVENTUAL SUCCESSFUL RETURN OF THE OFFENDER TO SOCIETY MORE AND MORE DIFFICULT ..."

THE COMMISSION IS PLEASED THAT ITS PUBLICATIONS HAVE ONCE AGAIN PLAYED AN IMPORTANT ROLE IN THE INTERPRETATION OF COMPLEX LEGAL ISSUES.

CHANGING CONDUCT

THE RECOMMENDATIONS AND COMMENTARIES IN COMMISSION REPORTS, WORKING PAPERS AND STUDIES OFTEN HAVE THE EFFECT OF INFLUENCING OR ALTERING ATTITUDES, BEHAVIOUR AND ADMINISTRATIVE PRACTICES, A CONTRIBUTION TO LAW REFORM CONSIDERED BY THE COMMISSION TO BE OF EQUAL IMPORTANCE TO ITS EFFECT ON LEGISLATION OR THE DEVELOPMENT OF CANADIAN JURISPRUDENCE.

COURT REFORM: THE UNIFIED COURT

The Commission is the originator in Canada of the movement toward the unification of family courts, which resulted from recommendations put forward in Report 6, *Family Law* (1976). Unified family court pilot projects have been established and continue to operate in Ontario, Saskatchewan and Newfoundland. In New Brunswick, a unified family court pilot project has now been extended to a province-wide system. Both Prince Edward Island and Manitoba have single court systems for family law matters.

The Commission is equally at the forefront of the concept of the unified court of criminal jurisdiction, which it proposed originally in a 1973 unpublished study by Darrell Roberts entitled "The Structure and Jurisdiction of the Courts and Classification of Offences" and later in Working Paper 59, *Toward a Unified Criminal Court* (1989). While no unified criminal court currently exists in Canada, changes in court structures have already taken place as a result of the Commission's recommendations, as reflected in the *British Columbia* and *Ontario Courts Amendments Acts* previously mentioned.

The Commission's work on court unification has been seriously considered by many task forces, committees and inquiries which have

been engaged in the study of court organization. The recently issued *Report of the Nova Scotia Court Structure Task Force* (March, 1991) recommends the creation of a unified family court for Nova Scotia and supports the principle of a unified criminal court, although it recommends that implementation be deferred until at least one pilot project has been established in Canada and "the Law Reform Commission of Canada has provided opinions regarding bail reviews, applications for prerogative writs and summary conviction appeals" under the system.

Controlling Criminal Prosecutions

In British Columbia, a recent study on the prosecutorial process (*Discretion to Prosecute Inquiry* (1990), Stephen Owen, Commissioner) made extensive use of Working Paper 62, *Controlling Criminal Prosecutions* (1990) both as a source of information on various models for the administration of criminal justice and for its recommendations on improving the process. In arriving at its own recommendations, the Inquiry made particular reference to the Law Reform Commission's proposals concerning the laying of charges and the standards to be applied in deciding whether charges should proceed.

The British Columbia legislature recently enacted the *Crown Counsel Act* which creates the Criminal Justice Branch of the Ministry of the Attorney General. The Branch's functions include approving and conducting the prosecution of all offences in the province. At the head of the Branch is the newly created position of Assistant Deputy Attorney General, Criminal Justice Branch. The Act stipulates that any directives regarding the approval or conduct of prosecutions to the Assistant Deputy Attorney General by either the Attorney General or the Assistant Attorney General must be given in writing and depending on the nature of the directive may or must be published in the provincial gazette. The enactment of this law was inspired by Working Paper 62 although on some issues it did not go as far as the working paper. While the law created the position of Assistant Deputy Attorney General within the Attorney General's Department, the working paper recommended the creation of an independent Director of Public Prosections to insulate the prosecution services from political influences and reduce potential conflicts of interest within the office of the Attorney General. The working paper further recommended that guidelines regarding the initiation of criminal proceedings be published as a means of increasing openness and accountability in the criminal justice system.

WHILE THE LAW CREATED THE POSITION OF ASSISTANT DEPUTY ATTORNEY GENERAL WITHIN THE ATTORNEY GENERAL'S DEPARTMENT, THE WORKING PAPER RECOMMENDED THE CREATION OF AN INDEPENDENT DIRECTOR OF PUBLIC PROSECTIONS TO INSULATE THE PROSECUTION SERVICES FROM POLITICAL INFLUENCES AND REDUCE POTENTIAL CONFLICTS OF INTEREST WITHIN THE OFFICE OF THE ATTORNEY GENERAL.

Disclosure by the Prosecution

As a result of recommendations made by the Report of the Justice Reform Committee (*Access to Justice* (1988)), the Province of British Columbia recently established a disclosure court in Vancouver to be run as a pilot project. Under this system, an accused, accompanied by counsel will receive formal disclosure of the Crown's case following which a plea is immediately entered. This project is modelled on an experiment undertaken in Montreal in 1975. The Montreal pilot project which was favourably evaluated and is now established procedure there, was initiated as a result of proposals made by the Commission in its Working Paper 4, *Discovery in Criminal Cases* (1974). In that document and in its subsequent Report 22, *Disclosure by the Prosecution* (1984), the Commission advanced the notion that formal disclosure procedures would result in fairer, more efficient and cost-effective dispositions of criminal cases.

[T]he Commission advanced the notion that formal disclosure procedures would result in fairer, more efficient and cost-effective dispositions of criminal cases.

Questioning Suspects

Following recommendations in Report 23, *Questioning Suspects* (1984), the Halton Police Force, assisted by the Commission, instituted and evaluated a two-year study on the videotaping of police interviews. As a result of the success of this project in expediting the administration of justice and reducing costs, other police forces both in Canada and abroad have initiated studies or have established procedures for videotaping evidence. Among those forces are the Ottawa Police which began to videotape confessions of persons suspected of crimes in July and the New Zealand Police which recently instituted a programme of gradual national implementation of videotaping interviews with suspects following a successful trial project modelled on the Halton Project.

Refugee Determination Process

Throughout the process of gathering information on the refugee determination process in Canada in preparation for its report, the Commission worked closely with the Immigration and Refugee Board. After observing Board hearings in four regions, conducting a series of interviews and administering survey questionnaires to various stakeholders in the refugee process, the Commission was in a position to make certain recommendations to the Board. Although the Commission's final report has yet to be issued, many of its preliminary recommendations have already been implemented by the Board through administrative action.

EDUCATING THE PUBLIC

THE COMMISSION CONTINUES TO CONSULT WITH MEMBERS OF THE GENERAL PUBLIC BY INVITING THEM TO COMMENT ON ITS RECOMMENDATIONS. RESPONSES ARE RECORDED AND ALL SUGGESTIONS ARE CONSIDERED WHEN THE COMMISSION PREPARES ITS RECOMMENDATIONS TO PARLIAMENT.

Approximately 10,000 individuals whose names appear on the Commission's mailing list receive circulars announcing forthcoming publications. Those wishing a specific document return the order form for that publication. This year, in response to over 21,700 requests received by mail, telephone and in person, the Commission distributed approximately 32,000 publications free of charge. In addition, the Commission continues to send information on law reform to schools in order to stimulate class discussions and to encourage Canadian youth to think about the law and law reform issues.

This year, the Commission set up its information kiosk at the following events: the Estrie, Montreal and Outaouais book fairs held respectively in Sherbrooke, Montreal and Hull, the Congress of the Canadian Bioethics Society (Quebec City), Law Day (Ottawa), and the Annual Conference of the Canadian Association of Law Libraries (Ottawa).

CONSULTING CANADIANS ON POLICE POWERS

Following the publication of Report 33, *Recodifying Criminal Law*, the Commission issued a booklet entitled *Police Powers: Highlights of Recommendations*, in which it outlined some of the significant reforms proposed in the report and compared them with the law as it exists at present. The booklet was distributed to the 3,300 persons (including

judges, lawyers, law professors and the public) who had requested a copy of the report. With the help of the Canadian Police Association, an additional 1,000 copies were sent to police officers across the country. Included with the booklet was a questionnaire which recipients were asked to complete and return. The number of completed questionnaires received (15% average rate of response from the general public; 30.4% rate of response from police), some with very thoughtful comments, reinforces the Commission's belief that Canadians are interested in reforming the laws of criminal procedure.

The questionnaire, along with a breakdown of the replies received from approximately 800 respondents, and a selection of their comments is reproduced below.

Information kiosk, Annual Conference of the Canadian Association of Law Libraries in Ottawa.

THE NUMBER OF COMPLETED QUESTIONNAIRES RECEIVED ..., REINFORCES THE COMMISSION'S BELIEF THAT CANADIANS ARE INTERESTED IN REFORMING THE LAWS OF CRIMINAL PROCEDURE.

QUESTIONNAIRE

We are interested in your opinion. Please state whether you agree or disagree with these statements:

	POLICE RESPONDANTS		*OTHER RESPONDANTS*	
	Yes	*No*	*Yes*	*No*
1. *The rights and duties of police and individuals in matters of search and seizure should be CLEARLY STATED in legislation.*	*280*	*14*	*407*	*18*
2. *To SIMPLIFY the procedures in the* Criminal Code *and increase EFFICIENCY, courts and police should be encouraged to use modern technology (e.g., using telephone to obtain warrants).*	*278*	*15*	*308*	*109*
3. *Powers to search persons, places and vehicles should be CLEARLY set out in the* Criminal Code.	*284*	*11*	*400*	*23*
4. *When subjected to searches, individuals should be informed of the nature of the police power to which they are subject and of their rights and duties in the circumstances.*	*235*	*55*	*397*	*28*

(Continued on page 26.)

	POLICE RESPONDANTS		OTHER RESPONDANTS	
	Yes	*No*	*Yes*	*No*
5. *To the extent possible, individuals should be treated with* DIGNITY AND RESPECT *when subjected to searches and seizures.*	*280*	*13*	*418*	*7*
6. *The power to conduct forensic tests (i.e., such tests as the taking of blood, breath or urine samples) on individuals should be* CLEARLY *stated in the* Criminal Code.	*286*	*5*	*407*	*16*
7. *As a general rule, courts should* MONITOR *the use of police powers through the issuance of warrants and by receiving reports subsequent to the exercise of the power.*	*185*	*103*	*357*	*59*
8. *To maximize privacy interests, judges should have the power to* IMPOSE CONDITIONS AND LIMITATIONS *on the interception of private communications by means of electronic surveillance devices.*	*184*	*109*	*363*	*60*
9. *Those whose property was damaged through entry to install surveillance devices (e.g., wiretaps) should be* NOTIFIED AND COMPENSATED.	*202*	*85*	*370*	*48*
10. *Procedures for dealing with goods seized in the course of criminal investigations should be as* SIMPLE AND EFFICIENT *as possible, especially where the goods are perishable or dangerous.*	*288*	*6*	*414*	*5*
11. *Procedures should favour an* EARLY RETURN *of seized goods, especially when seized from innocent third parties.*	*292*	*1*	*415*	*7*

"SOME PROCEDURES OUTLINED BY THE COMMISSION SERVE ONLY TO BOG THE POLICE WITH MORE PAPER WORK." (POLICE OFFICER)

A SAMPLE OF COMMENTS RECEIVED WITH THE QUESTIONNAIRE

"The Commission's efforts to clarify and simplify, to make existing law more consistent and to codify the common law is desirable. To that end, Report 33 is generally welcomed with some reservations and concerns as noted." (Police officer)

"Some procedures outlined by the Commission serve only to bog the police with more paper work." (Police officer)

"I think the clear approach to drafting and the coherently structured presentation of criminal procedures represents a vast improvement over the present *Criminal Code* ... . The adoption of this material in a new code of criminal procedure would enhance the administration of justice in this country from the perspective of both private citizens and enforcement agencies." (Professor of law)

"My wife and I find the documents that we receive from the Law Reform Commission very interesting and they are the subject of quite intense debate within the family." (Citizen)

"There is no doubt that the police must be empowered to proceed with searches and seizures to properly perform their duties. However, at no time should these powers be so discretionary as to curtail significantly the individual rights and freedoms that we must possess to be considered a truly free society." (Citizen)

"Legislation which gets overly detailed becomes obscure, certainly to laymen. A real code should be simple and clear to all." (Citizen)

"I agree with these recommendations, but do we have the resources, both human and financial, to implement them?" (Citizen)

"It is about time that clear guidelines were established so that the police and citizen know where they stand ... ." (Police officer)

"Any changes in legislation should thoroughly consider the impact upon the practical application in the field." (Police officer)

"Many of your recommendations for change would further restrict the police in their endeavours to uphold the law on behalf of all citizens of Canada." (Citizen)

"I AGREE WITH THESE RECOMMENDATIONS, BUT DO WE HAVE THE RESOURCES, BOTH HUMAN AND FINANCIAL, TO IMPLEMENT THEM?" (CITIZEN)

PUBLICATIONS

THE COMMISSION ISSUES THREE CATEGORIES OF DOCUMENTS: REPORTS TO PARLIAMENT, WORKING PAPERS AND STUDY PAPERS. TO DATE 33 REPORTS, 63 WORKING PAPERS, AND 78 STUDY PAPERS HAVE BEEN PUBLISHED. COMMISSION PERSONNEL HAVE ALSO CONTRIBUTED TO THE PRIVATE PUBLICATION OF MORE THAN 200 BOOKS AND ARTICLES. OVER 1.6 MILLION COPIES OF PUBLICATIONS HAVE BEEN DISTRIBUTED.

REPORTS TO PARLIAMENT

Commission Reports present the final views of the Commissioners on a given area of the law at the time of publication. Once a report has been tabled in Parliament, the advisory role of the Commission is completed in respect of this particular topic at that particular time. It then becomes a matter for the Government and Parliament to act upon, if they choose.

As the Commission strives for a complete, coherent and integrated code of criminal law, however, it will from time to time present revisions and refinements to areas of law covered previously in its reports.

REPORT 33
Recodifying Criminal Procedure. Volume One: Police Powers. Title I: Search and Related Matters

This report presents the first title of the first volume of the Commission's proposed Code of Criminal Procedure. Volume One, entitled *Police Powers* will comprise this Title, *Search and Related Matters*, and

Title II which will be devoted to the law of questioning suspects, arrest, compelling appearance, interim release and detention, and pretrial eyewitness identification.

Title I is divided into seven Parts: general matters, search and seizure, obtaining forensic evidence, testing persons for impairment in the operation of vehicles, electronic surveillance, disposition of seized things and privilege in relation to seized things. The structure and organization of the draft Code is logical and straightforward. Each part of the Code is preceded by introductory comments and each provision is followed by a comment unless it is self-explanatory.

The provisions in Part Two replace the variety of search and seizure powers and procedures now found at common law, in the *Criminal Code* and in other federal crime-related statutes such as the *Narcotic Control Act*, the *Food and Drugs Act* and the *Income Tax Act*. The basic goal is to provide protection against unreasonable search and seizure while still ensuring effective criminal investigation and law enforcement. The provisions specify the circumstances in which a warrant may be issued, the procedures to be followed in obtaining a warrant and the circumstances in which a search or seizure may be conducted without a warrant. Rules are clearly set out on such matters as: the general authority conferred by a warrant, the persons authorized to act under a warrant, the time when and the manner in which a search or seizure may be conducted, the notification to be given to persons affected, and the procedure to be followed when a claim of privilege is made during a search.

Part Three establishes a scheme to regulate certain investigative procedures that use the suspected or accused person as a source of incriminating evidence. It deals with procedures to obtain evidence or information relating to the commission of a crime when physical contact or the person's participation in the procedure is required. Included are such procedures as the examination of a person's body for identifying marks, the making of dental impressions, the taking of hair or blood samples and the employment of physical performance tests. The intent is to clarify the law and make it accessible to investigators, suspects and the general public for the first time, since at present, except for the taking of breath and blood samples and the taking of finger-prints, no statute regulates such procedures or defines the rights and obligations of the subjects.

Part Four regulates the obtaining and testing of breath and blood samples to detect impairment in the operation of vehicles. The provisions, while following the general approach of the present law, are

THE INTENT IS TO CLARIFY THE LAW AND MAKE IT ACCESSIBLE TO INVESTIGATORS, SUSPECTS AND THE GENERAL PUBLIC FOR THE FIRST TIME, SINCE AT PRESENT, EXCEPT FOR THE TAKING OF BREATH AND BLOOD SAMPLES AND THE TAKING OF FINGER-PRINTS, NO STATUTE REGULATES SUCH PROCEDURES OR DEFINES THE RIGHTS AND OBLIGATIONS OF THE SUBJECTS.

simplified and incorporate a number of important reforms. For example, it will no longer be a crime to refuse to comply with a request for a roadside test but upon failure or refusal to do so, a person may be arrested and brought to the police station for a breathalyser test. Also included are provisions allowing a peace officer to make an application to a justice for a warrant authorizing the taking of samples of a person's blood. In addition, procedures and requirements are established for the application and issuance of blood sample warrants and warrants to conduct other investigative procedures, for having blood samples released for independent analysis and for allowing blood samples to be tested for the presence of drugs.

The provisions in Part Five, *Electronic Surveillance*, are based on the present law, previous working papers which proposed reforms in this area and on recent Supreme Court of Canada decisions. The language used is more easily understood, however, and cross references are avoided wherever possible. While the current law forbids the interception of private communications without a warrant, the provisions in this Code give express power, in cases of danger to the life or safety of an officer, to monitor private communications so long as no recording is made of them. In addition, accused persons become entitled to full disclosure of all documents relating to an application for an authorization to intercept a private communication providing such disclosure does not pose a risk to safety, jeopardize an investigation in progress, disclose secret intelligence-gathering techniques or cause prejudice to innocent persons. Other provisions provide for a stricter test for the issuance of warrants, a clearer power to impose conditions on the execution of warrants, expanded notice provisions, a fuller renewal process and a special procedure for amending warrants.

Part Six sets out clear, uniform and simple procedures to govern the handling, detention and disposition of "objects of seizure." This scheme is intended to replace post-seizure procedures which are currently governed by complex *Criminal Code* provisions and by the diverse administrative policies and practices of individual police forces. Persons having an interest in seized things are given the means to locate them, track their movement and be informed of the person or persons responsible for their custody. The authorities are encouraged to consider promptly whether detention of anything seized is necessary. Accountability is promoted by requiring those responsible for a seizure to prepare a detailed inventory of the things seized, give copies to specified persons affected and attach a copy to a detailed post-seizure report that is submitted to a justice. If detention of a seized

thing is required, victims and others who claim a right to ownership or possession are provided with understandable, accessible and effective restoration procedures. Special procedures are established to deal with seizures of things that are dangerous or perishable.

Part Seven regulates the manner of dealing with privileged things or information contained in them after they are sealed or taken control of and placed in custody. The present *Criminal Code* contains special rules for handling seized things in relation to which a privilege is claimed. The *Code*'s special sealing and application procedures permit a lawyer at the time of seizure to assert the privilege on behalf of a named client. If the lawyer asserts the claim at the point of seizure, the peace officer must seal the documents. Parties must then apply for a hearing to determine whether the documents are to be treated as privileged. The Commission simplifies this procedure and allows the claim of privilege to be made by clients and third parties. Moreover, the provisions extend beyond the area of solicitor-client privilege to encompass all categories of privilege claims.

In this report the Commission has maintained its commitment to the principles adopted in Report 32, *Our Criminal Procedure*. Ultimately, Canadians should be presented with a new code, which responds to their needs and is in harmony with the *Canadian Charter of Rights and Freedoms*.

ULTIMATELY, CANADIANS SHOULD BE PRESENTED WITH A NEW CODE, WHICH RESPONDS TO THEIR NEEDS AND IS IN HARMONY WITH THE *Canadian Charter of Rights and Freedoms*.

WORKING PAPERS

Working papers are statements of the Commission's position at the time of publication and contain tentative recommendations for reform in a particular area. Such recommendations are not final and the primary purpose of the working paper is to elicit comment and provide a vehicle for consultation. This year, the Commission has published two working papers.

WORKING PAPER 62
Controlling Criminal Prosecutions: The Attorney General and the Crown Prosecutor

This working paper examines the role, responsibilities and powers of the combined office of the federal Attorney General and Minister of Justice and makes proposals for reform in the area of the administrative structure of the federal Department of Justice and in the powers of the Attorney General and Crown Prosecutors acting under the Attorney General to initiate, conduct and terminate criminal proceedings.

Following Confederation, the Department of Justice was created by *An Act Respecting the Depart-*

ment of Justice which provided for the appointment of a Minister of Justice, whose duties were to act as official legal adviser to the Governor General and Cabinet and who would also be entrusted with the powers and duties which belonged to the office of the Attorney General of England. Since the original legislation, with some exceptions, the structure of the office is unchanged.

The position of the present day Attorney General/Minister of Justice entails a multiplicity of duties with a potential for many conflicts. For example, as legal adviser to the Cabinet, the office-holder is responsible for certifying legislation to be in accordance with the *Charter*, which, the Supreme Court of Canada has made clear, is to receive a broad and liberal interpretation that preserves and protects individual rights. However, the same office-holder, as the Attorney General, is responsible for prosecutions, and in that role, might quite properly advocate legislation which could pose a threat to the individual rights guaranteed under the *Charter* in order to serve law enforcement purposes.

The reforms proposed by the Commission are designed to ensure the independence of the prosecution service from partisan political influences and to reduce potential conflicts of interest within the office of the Attorney General. Central to these reforms is the establishment of a new office, that of an independent Director of Public Prosecutions. The office is modelled on similar offices in England, Ireland and Australia, but is not dissimilar to the independent roles exercised in other spheres by the office of the Auditor General of Canada or the Chief Commissioner of the Canadian Human Rights Commission. Reporting to the Attorney General, the office-holder would assume responsibility for the Crown prosecution service. The powers of the office would include all the powers presently exercised by the Attorney General, who would also retain these powers and have the power to instruct the Director through guidelines of a general nature or specific directives concerning individual cases; such guidelines or directives would have to be in writing and tabled before Parliament.

The Commission proposes additional changes in the powers and procedures of Crown Prosecutors and the office of the Attorney General with respect to criminal prosecutions including the power to screen all charges before they are laid by the police, the replacement of the stay and withdrawal of proceedings power with the statutory power to discontinue proceedings, the elimination of police-prosecutors, the establishment of open guidelines regarding the initiation of criminal proceedings

RECOMMENDATION 16 ADDS FLEXIBILITY TO THE PRESENT LAW BY PERMITTING AN ACCUSED TO FILE AN APPEARANCE IN WRITING OR BY TELEPHONE OR BY OTHER MEANS OF COMMUNICATION.

Your court "appearance" might be just a telephone call away.

and preferring charges, and the reopening of preliminary hearings in the event that new evidence is discovered.

WORKING PAPER 63
Double Jeopardy, Pleas and Verdicts

This working paper examines the pleas and verdicts and the protections against double jeopardy found in the present law and makes recommendations for reform to ensure consistency with the general principles of criminal procedure set out in Report 32, *Our Criminal Procedure* (1988). The discussion of the issues and the recommendations following them are intended to render the law more understandable, rational and comprehensive.

A code of criminal procedure must ensure that there are appropriate and fair mechanisms for deciding guilt. An individual must have the opportunity to respond formally to an accusation, either by a plea of guilty, not guilty or another available plea.

An accused may respond by invoking the rules against double jeopardy, which prevent the state from obtaining multiple convictions for a single crime or from harassing an accused more than once for the same cause. The protections against double jeopardy, which include the special pleas of *autrefois acquit* and *convict* and the rules against multiple convictions and inconsistent judgments, are found in the present *Criminal Code* and in the common law. Important residual protection is found in the Constitution.

The plea of not guilty is the formal denial that a crime was committed. Once this plea is entered, the Crown is required at trial to prove beyond a reasonable doubt that the accused committed the crime. A plea of guilty relieves the Crown of the burden of proving guilt although the accused abandons any right to make full answer and defence to the charge. Under existing law, a special plea of justification is provided as a defense for the crime of defamatory libel. Procedures for entering pleas are governed by both the Criminal *Code* and the common law.

At the conclusion of a trial the judge or jury must decide whether a charge has been proved or not and consequently enter a verdict of guilty or not guilty. Special verdicts are available in cases of mental disorder and for the crime of defamatory libel.

Generally speaking, an accused can only be convicted of the crime actually charged. If, however, the evidence cannot prove the commission of that crime but can prove the commission of an included offence, the accused can be convicted of the latter.

The law of double jeopardy and the law relating to other pleas and verdicts is in need of reform. Statutory treatment is extremely sparse; existing provisions are scattered throughout the *Criminal Code* and are difficult to locate. Certain procedures are confusing, some lead to inefficiency while others are anachronistic. Moreover, there are shortfalls in the protections accorded to accused persons.

Among the 36 recommendations included in the working paper are proposals for improved protection against double jeopardy, a comprehensive treatment of the procedure surrounding pleas and verdicts, with a reduction in the number of permitted guilty pleas to two only, (guilty or not guilty) and a reduction in the number of permitted verdicts to three (guilty, not guilty, not liable by reason of mental disorder). The pleas and verdicts relating to defamatory libel are eliminated. The law regarding conviction for attempted crimes, included crimes and directed verdicts is clarified.

The proposals, if implemented, would strengthen existing common law and constitutional protections by providing a modern statutory scheme which is clear and balanced in its approach and informed by guiding principles and rational organization.

Study Papers

Often before a working paper is published, background information in the form of a study paper is accumulated through research and empirical studies. Many of these studies are not published but are catalogued in the Commission's library. However, a selection of these papers which convey valuable, original or topical information are published by the Commission. It should be noted, however, that the views expressed in these papers remain those of the author and not of the Commission. This year the Commission has published two study papers.

Toward a Canadian Advisory Council on Biomedical Ethics
by Jean-Louis Baudouin, Monique Ouellette and Patrick A. Molinari

In this study the authors recommend the establishment of a permanent and independent body to act as a clearing house for the flourishing but fragmented and diverse biomedical activity taking place both in Canada and throughout the world as evidenced by the proliferation of commissions, hospital ethics and research committees, university, government, professional and religious organizations involved in this field.

THE PROPOSALS, IF IMPLEMENTED, WOULD STRENGTHEN EXISTING COMMON LAW AND CONSTITUTIONAL PROTECTIONS BY PROVIDING A MODERN STATUTORY SCHEME WHICH IS CLEAR AND BALANCED IN ITS APPROACH AND INFORMED BY GUIDING PRINCIPLES AND RATIONAL ORGANIZATION.

THE ABILITY TO IDENTIFY AND TREAT GENETIC DISORDERS PRESENTS NEW OPTIONS AND NEW UNDERSTANDING BUT WHETHER THE APPLICATION OF THE NEW KNOWLEDGE RESULTS IN GOOD OR EVIL DEPENDS ON HOW IT IS APPLIED BY SOCIETY, SCIENTISTS AND GOVERNMENT.

The authors envision a body, national in scope, which would work in direct and close contact with existing organizations to coordinate biomedical activity and research and disseminate information about it; provide advice and issue non-binding opinions on bioethical matters; act as a biomedical think tank; establish contacts with international bodies and organizations in other countries and present Canada's position on major problems to them.

The organization, called for convenience, a council, should be composed of a permanent administrative staff and between 22 and 30 full-time and part-time members of various backgrounds and expertise appointed by the Governor General in Council. For administrative purposes it should report to Health and Welfare Canada. Other aspects of its structure remain to be determined.

While the concept of a permanent ethics advisory council is relatively new, it is part of an international trend. Australia, France and Denmark have already established similar bodies and other countries have such proposals under consideration.

Since at this time there is no organization in Canada capable of bringing health care professionals, ethicists and the lay public together to address both clinical and research ethics issues, these recommendations, if implemented, would answer a very definite need for fostering nation-wide reflection and would move Canada to the forefront of activity in this very important area.

HUMAN DIGNITY AND GENETIC HERITAGE
by Bartha Maria Knoppers

This study deals with the very complex moral, social, economic, political and legal issues that are emerging due to rapid advances in human genetics. The ability to identify and treat genetic disorders presents new options and new understanding but whether the application of the new knowledge results in good or evil depends on how it is applied by society, scientists and government.

While human dignity is recognized as a fundamental right from which all human rights derive, the right to an unaltered genetic heritage, if viewed as a basic human right, could lead to policies, such as genetic screening and selection, which undermine this basic principle. Since the concept of genetic heritage encompasses both individual and collective issues, the notion of human dignity is better served by allowing the individual the freedom to control his/her genetic expression.

In the Canadian context, the *Canadian Charter of Rights and Freedoms* may offer the freedom of choice necessary to protect human dignity, but given social prejudices surrounding disease and the new knowledge which genetics is providing in terms of the identification of untreatable diseases and rare diseases which are not cost-effective to treat, it might be necessary to go beyond the protections provided by the *Charter* and consider whether new legislation is required, either to expand or restrict intervention in genetic medicine in keeping with what we as a society think human genetics should accomplish.

It is not too soon to address such issues as testing in the workplace, testing for access to insurance and testing for reproductive purposes, which benefit society by providing information leading to disease prevention and fetal health, but carry with them the potential for stigmatization and discrimination.

Genetic justice requires the development of a new social contract, based on the ethical principles of reciprocity and mutuality, which go beyond the traditional concepts of utilitarianism, libertarianism and egalitarianism. Reciprocity or exchange of knowledge is required in order to ensure that ordinary citizens benefit from knowledge of medical genetics thereby preventing the state from imposing on them its own decisions. Mutuality or civic responsibility allows individuals the freedom to act upon the knowledge but, if they choose not to act, they may be bound by state imposed exceptions to individual freedom based upon notions of the common good.

The author calls for more study into the ways in which human genetics will affect the social fabric of Canadian society with emphasis on human rights questions and the adequacy of current public and private law concepts. Individuals must be prepared to bear the costs not only for technology but for education and the provision of genetic services. Society must be equally prepared for the responsibility of making genetic choices which will affect the common heritage of humankind.

GENETIC JUSTICE REQUIRES THE DEVELOPMENT OF A NEW SOCIAL CONTRACT, BASED ON THE ETHICAL PRINCIPLES OF RECIPROCITY AND MUTUALITY, WHICH GO BEYOND THE TRADITIONAL CONCEPTS OF UTILITARIANISM, LIBERTARIANISM AND EGALITARIANISM.

ONGOING WORK

The Current Team

During the period of the reporting year, Mr. Justice Allen M. Linden was appointed to the Federal Court of Appeal. Succeeding him as president is Dr. Gilles Létourneau, former Vice-President of the Commission. Joining President Létourneau is Commissioner John Frecker, a barrister and solicitor from St. John's, Newfoundland. At year's end, the Commission was awaiting the appointment of its new Vice-President and two Commissioners, to replace Judge Michèle Rivet who was appointed to the Human Rights Tribunal of Quebec and Mr. Joseph Maingot, Q.C. whose term of office expired on April 7, 1989.

Other key members of the Commission staff, include Mr. François Handfield, Secretary of the Commission, Professor Patrick J. Fitzgerald, Co-ordinator, Substantive Criminal Law Project and Mr. Stanley A. Cohen, Co-ordinator, Criminal Procedure Project. Ms. Susan Zimmerman, of the Quebec and Ontario Bars, is the Executive Assistant to the President.

Substantive Criminal Law Project

The direction of the Substantive Criminal Law Project was the responsibility of former President Mr. Justice Allen M. Linden and thereafter of President Létourneau. Professor Patrick Fitzgerald is the Project Co-ordinator and is responsible for the supervision and direction of research.

The present aim of the project is to complete the remaining chapters and provisions of the proposed new Criminal Code. Report 31, *Recodifying Criminal Law* (1988), did not include the crimes of sexual assault or sexual exploitation of young persons and did not include recommendations on the role of criminal law in dealing with obscenity, pornography and prostitution.

The project has co-operated with the Department of Justice in preparing a framework document entitled *Toward a New General Part for the Criminal Code of Canada* for an examination to be conducted by a subcommittee of the House of Commons Standing Committee on Justice and the Solicitor General; has advised the Department of Justice on police use of deadly force in law enforcement; has embarked on a study of preventive justice with special reference to constitutional aspects; and is working on a report on drugs and the criminal law.

Criminal Procedure Project

President Gilles Létourneau is the Commissioner responsible for the Criminal Procedure Project. Mr. Stanley A. Cohen is the Project Co-ordinator and is responsible for the supervision and direction of research.

The ultimate objective of the project is the preparation of a code of criminal procedure that will address all the major themes, including police and investigative powers, and pretrial, trial and appeal procedure. The first volume of this code, dealing with police powers was issued this year. Codification has been proceeding on the basis of a published statement enunciating general principles of criminal procedure. Report 32, *Our Criminal Procedure* (1988), sets out these guiding principles.

All of the preliminary work on the subject of police powers has been

From left to right:

Professor Patrick J. Fitzgerald receives a certificate of recognition at a ceremony honouring the Commission's twentieth anniversary. Professor Fitzgerald has been with the Commission since 1973.

Mr. François Handfield, Secretary of the Commission.

Ms. Susan Zimmerman, Executive Assistant to the President.

published in the form of working papers or reports. Report 33, which is Title I of the first volume of the Code of Criminal Procedure addresses a variety of subjects under the general heading of "Search and Related Matters." Work is well underway on Title II of Volume One pertaining to arrest and investigation.

for Commission approval for publication shortly. Two working papers, one entitled *Trial Within a Reasonable Time*, and the other *Immunity from Prosecution*, have been approved for publication and will appear within the coming year.

The link between the project's core work on criminal procedure and the

From left to right:

Mr. Justice Allen M. Linden, former President of the Commission.

Dr. Gilles Létourneau, Commission President.

Mr. Stanley A. Cohen, Co-ordinator, Criminal Procedure Project and Special Counsel, the Canadian Charter of Rights and Freedoms.

The Commission's two-track approach to the codification of the law of criminal procedure entails the prior completion of a variety of working papers and reports (track one) which form the basis for the codification exercise (track two).

This year Working Paper 62, *Controlling Criminal Prosecutions* and Working Paper 63, *Double Jeopardy, Pleas and Verdicts* were published. Other working papers on remedies, appeals, extraordinary remedies, costs, and the role of the judge in the conduct of trial are in various stages of advanced development and will be brought forward

field of human rights law is an intimate one. The relationship between the two is especially evident in the report which the Commission has been asked to prepare in response to a letter of reference from the Minister of Justice dated June 8th, 1990 on Aboriginal and multicultural justice. The Minister's authority to make such a request of the Commission is set out in subsection 12(2) of the *Law Reform Commission Act*. Since the governing legislation requires the Commission to respond to requests of this nature as a matter of "special priority," work in some areas of the Criminal Procedure

Project was held back in order to accommodate work on the Minister's reference.

Nevertheless, in due course the Commission will begin to present aspects of its work on subsequent volumes of the draft Code as well as drafts of its working papers in progress to its regular consultation groups and then will invite greater public involvement in the consultation process.

Human Rights

As announced in the *19th Annual Report*, the Commission is expanding its preliminary research activities into the human rights field under the direction of Mr. Stanley A. Cohen, Special Counsel, *Canadian Charter of Rights and Freedoms*.

Upon receipt of its commissioned study by Professor William Pentney of the University of Ottawa entitled *Human Rights Law Reform in the Federal Sphere of Jurisdiction*, the Commission convened a special advisory session with a group of distinguished Canadians in order to identify appropriate areas in the field of human rights for future Commission concentration and study. This group was unanimous in its advice to the Commission that Aboriginal justice issues should be treated as a matter of high research priority. This advice proved apposite inasmuch as the Commission was contemporaneously requested by the Minister of Justice to devote resources and study to issues involving Aboriginal and multicultural justice.

As is noted in the portion of this Report describing efforts in relation to the Minister's reference a number of studies have been commissioned which will become available to the public in due course. Also, the two reports to Parliament on the reference that will be tabled in the coming year will not only present proposals for change but will also seek to identify an agenda for future study and research for law reformers and policy-makers.

Minister's Reference on Aboriginal and Multicultural Criminal Justice Issues

As a result of a letter of reference to the Commission from the Minister of Justice dated June 8th, 1990 the Commission began work on a special report on Aboriginal and multicultural justice. The request, made pursuant to subsection 12(2) of the *Law Reform Commission Act*, requires the Commission to take on such projects as "a matter of special priority." The Commission was asked to examine the *Criminal Code* and related statutes and the extent to which these laws ensure

THIS GROUP WAS UNANIMOUS IN ITS ADVICE TO THE COMMISSION THAT ABORIGINAL JUSTICE ISSUES SHOULD BE TREATED AS A MATTER OF HIGH RESEARCH PRIORITY.

Judge Michèle Rivet, Commissioner.

Burleigh Trevor-Deutsch, Co-ordinator, Protection of Life Project.

that Aboriginal peoples and members of cultural or religious minorities have equal access to justice and are treated equitably and with respect.

The nature of the Minister's request necessitated the division of the work into two components: an Aboriginal justice review and a racial minorities and multicultural justice review. The Commission, thus, will be submitting two reports to Parliament in response to the Minister's request.

President Gilles Létourneau is the Commissioner responsible for the Minister's reference and Mr. Stanley A. Cohen is the project's director.

Work on the reference commenced with a broad mailing to interested parties, organizations and experts. Letters were sent and liaison was established with various government departments and agencies and with all of the currently operating commissions of inquiry. Four consultation sessions were convened with community leaders, experts and activists who were in a position to provide the Commission with unique perspectives on the operation of the criminal justice system. In addition, ten background studies were commissioned (five on Aboriginal justice, four on multicultural issues and one general study).

The two reports to Parliament are expected to be tabled in the coming year. Independent publication of a number of the background studies is also contemplated, possibly in a special issue of a respected Canadian legal journal.

Protection of Life Project

Judge Michèle Rivet of the Court of Quebec was the Commissioner responsible for the Protection of Life Project until her departure on August 31, 1990. Dr. Burleigh Trevor-Deutsch was the Project Co-ordinator until his departure on December 31, 1990. Pending new appointments, President Létourneau has assumed responsibility for the project.

The project, based in Montreal, was established in 1975. Originally, its primary goal was to analyze the strengths and weaknesses of existing health-related federal law to respond to both technological developments and evolving values. The emphasis was on the criminal aspects of the practice of medicine. This gave rise to studies on euthanasia and the cessation of medical treatment, sterilization and the mentally handicapped, behaviour alteration, the legal definition of death, medical treatment and the criminal law, informed consent and the sanctity and quality of life. In 1986, recommendations and conclu-

sions drawn from these separately published papers were collected and presented to Parliament in Report 28, *Some Aspects of Medical Treatment and Criminal Law.*

This year, two study papers were published. The first, entitled *Toward a Canadian Advisory Council on Biomedical Ethics*, examines the desirability of establishing a fully independent body modelled on similar bodies in other countries. The second, entitled *Human Dignity and Genetic Heritage* addresses issues that must be faced as advances in technology allow us to alter our genetic make-up.

At year's end the Commission had approved the publication of two working papers. The first, entitled *Medically Assisted Procreation*, investigates the delicate balance between social merits, risks and individual rights created by advances in medical technology such as artificial insemination, in vitro fertilization and sex selection which now allow us to take an active role in the process of human reproduction. The second, entitled *Procurement and Transfer of Human Tissues and Organs* addresses the problem of the shortage of transferable organs, tissues and bodily substances. As medical transplant technology progresses, so does the demand for bodily parts from cadavers and live donors. While donation is to be encouraged, this study addresses the issues of informed consent, the protection of donors and their families and commercialization.

Following up on Working Paper 61, *Biomedical Experimentation Involving Human Subjects* (1989), a study is being prepared dealing with the testing of new drugs on human beings. Other papers at various stages of completion include a study on patenting life forms, and a study of the ethics of medical screening in the workplace.

In 1981, the Protection of Life Project added a new component to its health-related concerns: the protection of the environment. The basic philosophical thrust remained the same — the protection of life and health in the context of technological hazards that threaten human integrity. Papers published by the Commission in this area include *Political Economy of Environmental Hazards* (1984), *Crimes Against the Environment* (1985), *Workplace Pollution* (1987) and *Pesticides in Canada: An Examination of Federal Law and Policy* (1987). This year, two studies are in progress. The first, a study of the Canadian law of oceans, addresses a range of issues relating to the management of oceans with particular emphasis on pollution and environmental problems. The second, a study of the federal management of contaminated lands is being undertaken jointly with the Administrative Law Project.

[A] STUDY OF THE CANADIAN LAW OF OCEANS ADDRESSES A RANGE OF ISSUES RELATING TO THE MANAGEMENT OF OCEANS WITH PARTICULAR EMPHASIS ON POLLUTION AND ENVIRONMENTAL PROBLEMS.

Administrative Law Project

The Commissioner responsible for the Administrative Law Project is Mr. John P. Frecker. Dr. Patrick Robardet was the Project Co-ordinator and was responsible for the supervision and direction of research until his departure on December 31, 1990.

Mr. John P. Frecker, Commissioner.

Dr. Patrick Robardet, Co-ordinator, Administrative Law Project.

Work on the reform and development of federal administrative law continued to focus on specific projects to improve government operations.

A major initiative this year was work undertaken on the procedure used in the determination of refugee status in Canada. Since the Supreme Court of Canada decision in *Singh* v. *Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177, legislators and administrators have been attempting to develop procedures which are both fair to the individual refugee claimant and efficient in handling the tremendous number of claims made each year. Following extensive empirical research, consultations with members and staff of the Immigration and Refugee Board in Toronto, Vancouver and Montreal and other experts involved in refugee affairs, the Commission is in the final stages of preparing a report, entitled "The Determination of Refugee Status in Canada: A Review of the Procedure" which is expected to be published in 1992.

Earlier work on policy implementation reflected in Working Paper 51, *Policy Implementation, Compliance and Administrative Law* (1986) led to the conclusion that the use of financial incentives as governing instruments was not well understood even though they continue to be widely used by government to achieve public policy objectives. In the working paper it was pointed out that formal legal structures and procedural protections generally associated with conventional regulatory instruments such as offences and licensing regimes were absent in the case of financial incentives to the detriment of an open, accountable, fair and effective system. Subsequent research has confirmed the *ad hoc* and informal nature of much incentive activity. In October, the Commission jointly sponsored a symposium in Calgary in order to benefit from an exchange of views on the subject. The symposium, entitled "The Power of the Purse: Financial Incentives as Regulatory Instruments," was also sponsored by the Canadian Institute of Resources Law and the Faculty of Law, University of Calgary. It brought together experts in the field of financial incentives, including members of the Canadian academic legal community and consultants to the Administrative Law Project. Among the papers presented at the sympo-

sium were two prepared by Commission consultants, a background paper entitled "The Legal Framework for Financial Incentives as Regulatory Instruments" and "Thumbs, Fingers, and Pushing on String: Legal Accountability in the Use of Federal Financial Incentives." A selection of papers from the symposium, including the two by Commission personnel, will be published in a forthcoming issue of the *Alberta Law Review*. The Conference provided the Commission with a greater understanding of the range of incentives available and their impact as regulatory instruments along with a perception that it may be necessary to structure the legal framework of financial incentives differently from that used to structure offence and licensing regimes. In the light of the knowledge gained at the symposium, the Commission's study on the topic of financial incentives has been divided into two working papers. Both papers, one entitled *Establishing Financial Incentive Programs: The Need for Increased Legal Structuring* and the other, pertaining to the administration and enforcement of incentive programs, will be published in 1992.

In conjunction with the Protection of Life Project of the Commission, the Administrative Law Project has been examining the issue of federal contaminated lands and the development of a legal regime to address their clean-up. Two Commission papers on this topic were presented at the Europe–Canada Conference on Environment and Waste in Montpellier, France. A working paper is expected to be completed and published in 1992.

Work on inspectorates, tort liability of the federal Crown, and the use of federal–provincial agreements in the Canadian regulatory process is continuing.

A draft working paper on a proposal for the creation of a federal ombudsman was completed and will be submitted to the Commission for approval during the next year. The Project gratefully acknowledges Her Honour, Judge Inger Hansen of the Ontario Court (Provincial Division), Mr. Stephen Owen, B.C. Ombudsman, Mr. Charles Ferris, Legal Counsel to the New Brunswick Ombudsman, and Professor Donald Rowat of Carleton University for their significant contributions to the Ombudsman study.

Throughout the year consultants to the Administrative Law Project have attended seminars and presented papers on environmental protection, policy implementation and ombudsman issues and have worked on various projects with officials of other federal agencies to further the cause of administrative law reform.

CONSULTATIONS

THE COMMISSION WISHES TO THANK ALL THOSE CONSULTED FOR DONATING THEIR TIME AND CONTRIBUTING SO GENEROUSLY TO THE CAUSE OF LAW REFORM.

REGULAR CONSULTATIONS

SUBSTANTIVE CRIMINAL LAW AND CRIMINAL PROCEDURE PROJECTS

As part of its involvement in criminal law review, the Commission regularly consults with major interest groups. These include an advisory panel of judges from across Canada, a delegation of defence lawyers nominated by the Canadian Bar Association, chiefs of police, legal scholars chosen by the Canadian Association of Law Teachers and representatives from the federal and provincial governments. These consultations enable the Commission to benefit from the advice of key players in the justice system.

This year, meetings were held in Vancouver. The topics discussed by the different representatives of the groups named below, included arrest and bail, sentencing, hearing procedures and immunity from prosecution.

Advisory Panel of Judges

The Hon. Mr. Justice Stephen Borins,
Ontario Court of Justice (General Division), Toronto

The Hon. Mr. Justice David H. Doherty,
Court of Appeal of Ontario, Toronto

The Hon. Mr. Justice Morris Fish,
Court of Appeal of Quebec, Montreal

The Hon. Mr. Justice Patrick J. LeSage,
Ontario Court of Justice (General Division), Milton

The Hon. Mr. Justice Wallace T. Oppal,
Supreme Court of British Columbia, Vancouver

The Hon. Mr. Justice Michel Proulx,
Court of Appeal of Quebec, Montreal

His Honour Judge Robert D. Reilly,
Provincial Court of Ontario, Barrie

His Honour Judge Tom C. Smith,
Provincial Court of British Columbia, Williams Lake

The Hon. Mr. Justice William A. Stevenson
Court of Appeal of Alberta, Edmonton

The Hon. Mr. Justice Josiah Wood,
Court of Appeal of British Columbia, Vancouver

Canadian Bar Association

Mr. G. Greg Brodsky, Q.C.,
Winnipeg

Mr. Tom Burns, Crown Counsel,
Vancouver

Mr. Alan D. Gold, Toronto

Mr. Peter Leask, Q.C., Vancouver

Mr. Richard C. Peck, Q.C.,
Vancouver

Mr. Joel E. Pink, Q.C., Halifax

Mr. Marc Rosenberg, Toronto

Mr. Donald J. Sorochan, Vancouver

Canadian Association of Chiefs of Police

Chief Greg Cohoon,
Moncton Police Force

Chief Thomas G. Flanagan, S.C.
Ottawa Police Force

Mr. Guy Lafrance,
Legal Adviser,
Montreal Urban Community Police

Inspector John Lindsay,
Edmonton Police Force

Chief Collin Millar,
Hamilton–Wentworth Regional Police

Chief Herbert Stephen,
Winnipeg Police Department

Canadian Association of Law Teachers

Professor Bruce Archibald,
Dalhousie Law School

Professor Anne-Marie Boisvert,
University of Montreal

Professor Gerald A. Ferguson,
University of Victoria

Professor Keith B. Jobson,
University of Victoria

Professor Anne Stalker,
University of Calgary

Professor Louise Viau,
University of Montreal

Federal/Provincial Government

Mr. Gordon S. Gale, Q.C.,
Department of the Attorney-General, Nova Scotia

Mr. Howard Morton, Q.C.,
Ministry of the Attorney-General, Ontario

Ms. Carol Snell,
Department of Justice, Saskatchewan

Mr. Edwin A. Tollefson, Q.C.,
Department of Justice, Ottawa

Mr. Michael Watson,
Department of the Attorney General, Alberta

Mr. Stuart J. Whitley, Q.C.,
Department of Justice (Attorney General's Office), Manitoba

Human Rights Advisory Group

During the year a Human Rights Advisory Group was established to guide the Commission in its work in this area and to identify subjects for further study. The Group, whose membership is listed below, met at Niagara-on-the-Lake on June 14 and 15, 1990.

Mr. Raj Anand,
Barrister, Toronto

Professor Anne Bayefsky,
Faculty of Law (Common Law),
University of Ottawa

Mr. Stuart Beaty,
Director General,
Policy and Communications Directorate,
Canadian Human Rights Commission

Professor William Black,
Director,
Human Rights Research and Education Centre,
University of Ottawa

Professor Henri Brun,
Faculty of Law,
Laval University

Professor Lorenne Clarke,
Faculty of Law,
Dalhousie Law School

The Hon. Mr. Justice Jules Deschênes,
Montreal

Ms. Catherine Frazee,
Chief Commissioner,
Ontario Human Rights Commission

Professor Dale Gibson,
Faculty of Law,
University of Manitoba

Ms. Christina Head,
Legal Analyst,
Canadian Advisory Council on the Status of Women

Mr. Harry LaForme,
Commissioner,
Indian Commission of Ontario

Mr. Martin Low,
Senior General Counsel,
Human Rights Law Section,
Department of Justice, Ottawa

Professor William F. Pentney,
Faculty of Law (Common Law),
University of Ottawa (on leave)

The Hon. Mr. Justice Walter Tarnopolsky,
Supreme Court of Ontario

Special Consultations

In connection with its study of Aboriginal and multicultural criminal justice issues, the Commission conducted consultations with a select body of representatives of these communities from both Eastern and Western Canada. The Commission held meetings in Edmonton, Toronto and Winnipeg. Present at these meetings were the individuals listed below.

Aboriginal Consultation Groups

Edmonton, March 18-19, 1991

Mr. Daniel Bellgarde,
First Vice-Chief,
Federation of Saskatchewan Indian Nations

Ms. Marion Buller,
Barrister and Solicitor,
Member, Indigenous Bar Association

Mr. Dennis Callihoo,
Barrister and Solicitor

Mr. Larry Chartrand,
Chair,
Indigenous Bar Association Justice Committee

Professor Paul L.A.H. Chartrand,
Department of Native Studies,
University of Manitoba

Professor Michael Jackson,
Faculty of Law,
University of British Columbia

Ms. Deborah Jacobs,
Associate Director of Education,
Squamish Nation

Professor H. Archibald Kaiser,
Dalhousie Law School

Ms. Joan Lavalée,
Elder,
Duck Lake, Saskatchewan

Mr. Leonard (Tony) Mandamin,
Barrister and Solicitor

Mr. Ovide Mercredi,
Barrister and Solicitor,
Vice-Chief,
Assembly of First Nations

Professor Patricia A. Monture-OKanee,
Dalhousie Law School

Ms. Eileen Powless,
Barrister and Solicitor,
Indian Association of Alberta

Ms. Carol Roberts,
Legal Counsel,
Department of Justice (Northwest Territories)

Professor Philip C. Stenning,
Centre of Criminology,
University of Toronto,
Former Consultant to Marshall Inquiry

Ms. Fran Sugar,
Task Force on Federally Sentenced Women

Mr. Allan Torbitt,
Political Co-ordinator,
Assembly of Manitoba Chiefs

Ms. Rosemary Trehearne,
Manager, Justice Programs,
Council for Yukon Indians

Toronto, March 25-26, 1991

Mr. Jerome Berthellete,
Executive Director,
National Association of Friendship Centres of Canada

Mr. Ian B. Cowie,
Barrister and Solicitor,
Consultant

Sergeant Bob Crawford,
Metropolitan Toronto Police Force

Mr. Chester Cunningham,
Executive Director,
Native Counselling Services of Alberta

Mr. Ab Currie,
Department of Justice, Ottawa

Professor Anthony N. Doob,
Centre of Criminology,
University of Toronto,
Former Member,
Canadian Sentencing Commission,
Consultant to the Nishnawbe-Aski Legal Services Corporation

Grand Chief Phil Fontaine,
Association of Manitoba Chiefs

Mr. John Giokas,
Department of Justice, Ottawa

Mr. Roger Jones,
Barrister and Solicitor,
Former President,
Indigenous Bar Association

Professor H. Archibald Kaiser,
Dalhousie Law School

Ms. Rosemarie Kuptana,
Former Vice-President,
Inuit Circumpolar Conference

Mr. Harry LaForme,
Commissioner,
Indian Commission of Ontario

Mr. Ovide Mercredi,
Barrister and Solicitor,
Vice-Chief,
Assembly of First Nations

Chief Henry Mianscum,
Mistissini Band (Cree)

Grand Chief Mike Mitchell,
Mohawk Council,
Territory of Akwesasne

Ms. Carole V. Montagnes,
Executive Director,
Ontario Native Council on Justice

Professor Patricia A. Monture-OKanee,
Dalhousie Law School

Professor Graydon Nicholas,
Chair, Native Studies,
St. Thomas University,
Former President,
Union of New Brunswick Indians

Mr. Moses Okimaw,
Barrister and Solicitor,
Association of Manitoba Chiefs

Chief Violet Pachanos,
Chisasibi Band (Cree)

Mr. Gordon Peters,
Ontario Regional Chief,
Chiefs of Ontario

Ms. Viola Robinson,
President,
Native Council of Canada

Chief Tom Sampson,
Chairman,
First Nations of South Island Tribal Council,
British Columbia

Mr. Art Solomon,
Elder,
Alban, Ontario

Mr. Lewis Staats,
Member,
Six Nations Police Commission

Professor Philip C. Stenning,
Centre of Criminology,
University of Toronto,
Former Consultant to Marshall Inquiry

Mr. Paul Williams,
Counsel to Iroquois Confederacy,
Barrister and Solicitor practising exclusively Aboriginal Law

Chief Bill Wilson,
Barrister and Solicitor,
First Nations Congress

Winnipeg, April 30, 1991: Métis National Council

Ms. Cynthia Bertolin-Desmeules,
Barrister and Solicitor,
Métis Nation of Alberta

Mr. David Chartrand,
Manitoba Métis Federation

Professor Paul L.A.H. Chartrand,
Department of Native Studies,
University of Manitoba

Mr. Norman Evans,
Barrister and Solicitor,
Pacific Métis Federation

Mr. David Gray,
Legal Counsel,
Manitoba Métis Federation

Mr. Ron Rivard,
Executive Director,
Métis National Council

Mr. Edward Swain,
Manitoba Métis Federation

Multicultural Consultation Group

March 27-28, 1991, Toronto

Mr. Raj Anand,
Barrister and Solicitor, Toronto

Ms. Yvone Atwell,
President,
Afro Canadian Caucus of Nova Scotia

Mr. Emilio Binavince,
Barrister and Solicitor, Ottawa

Professor Jean-Paul Brodeur,
International Centre for Comparative Criminology,
University of Montreal

Professor Don Clairmont,
Dalhousie Law School

Mr. Ab Currie,
Department of Justice, Ottawa

Ms. Margaret Dunsmore,
Department of the Secretary of State,
Ottawa

Professor Brian Etherington,
University of Windsor

Ms. Avvy Go,
President,
Chinese Canadian National Council,
(Toronto Chapter)

Professor Marc Gold,
University of Toronto

Dr. Wilson Head,
Past President,
Federation of Race Relations Organizations (Ontario)

Dr. Harish Jain,
Faculty of Business,
McMaster University

Professor H. Archibald Kaiser,
Dalhousie Law School

Professor Evelyn Kallen,
Department of Anthropology,
York University

Ms. Joana Kuras,
Member,
Lithuanian Canadian Community

Dr. Lillian Ma,
Chair,
Equality Rights Committee

Mr. Dan McIntyre,
Director,
Race Relations and Policing Unit,
Ministry of the Solicitor General,
Toronto

Professor Errol Mendes,
Faculty of Law,
University of Western Ontario

Mr. Fo Niemi,
Executive Director,
Centre for Research Action on Race Relations

Mr. Manuel Prutschi,
Canadian Jewish Congress

Ms. Lillian To,
Executive Director,
SUCCESS

Dr. Claudia Wright,
Department of Political Science,
University of Winnipeg

Mr. Gary Yee,
Metro Chinese and South East Asian Legal Clinic

Refugee Determination Process Consultation Groups

In connection with its study of the current refugee determination process, the Commission conducted consultations with members and staff of the Immigration and Refugee Board in Toronto, Vancouver and Montreal. At the same time the Commission consulted with other experts involved in refugee affairs. Present at these meetings, were the individuals listed below.

Toronto, February 22, 1991

Mr. Tom Clarke,
Inter-Church Committee

Mr. George Cram,
Toronto

Mr. Marvin Frey,
Mennonite Central Committee

Ms. Esther Ishimura,
Chairperson,
VIGIL

Mr. Lloyd Jones,
Canadian Baptist Federation
Refugee Services

Ms. Helga Kutz-Harder,
United Church of Canada

Mr. Colin McAdam,
Jesuit Refugee Services Canada

Ms. Katherine McConnell,
World Vision Canada

Rabbi Gunther Plaut,
Holy Blossom Temple

Ms. Nancy Pocock,
Canadian Society of Friends
Services Committee

Mr. Robert Shropshire,
Anglican Church House

Ms. Ellen Turley,
Working Group on Refugee
Resettlement

Mr. Arie G. Van Eyck,
Council of Christian Reformed
Churches of Canada

Mr. Peter Zwart,
Refugee Coordinator,
Christian Reformed World Relief
Committee of Canada

Toronto, February 22, 1991
Legal Counsel

Ms. Rosalie S. Abella,
Chair,
Ontario Law Reform Commission

Mr. William H. Angus,
Osgoode Hall Law School,
York University

Mr. Andrew C. Dekany,
Barrister and Solicitor

Professor John M. Evans,
Osgoode Hall Law School,
York University

Ms. Nancy Goodman,
Barrister and Solicitor

Professor James C. Hathaway,
Associate Dean,
Osgoode Hall Law School,
York University

Mr. Robert L. Holden,
Provincial Director,
Ontario Legal Aid Plan

Mr. Laron P. Hopkins,
Barrister and Solicitor

Ms. Barbara Jackman,
Barrister and Solicitor

Ms. Ruth Lawson,
Ontario Legal Aid Plan

Mr. David Matas,
Barrister and Solicitor

Ms. Carolyn McChesney,
Barrister and Solicitor

Mr. Rod McDowell,
Niagara South Community Legal
Services

Mr. Ron Schacter,
Parkdale Community Legal Services

Mr. Michael Schelew,
Barrister and Solicitor

Mr. Peter Showler,
Director,
Ottawa Community Legal Services

Mr. Steven Tress,
Barrister and Solicitor

Ms. Rose Voydavic,
Director,
Legal Assistance of Windsor

Mr. Lorne Waldman,
Barrister and Solicitor

Ms. Pia Zambelli,
Barrister and Solicitor

Vancouver, March 20, 1991

Ms. Karuna Agrawal,
Canadian Human Rights
Commission

Mr. Jim Aldridge,
Barrister and Solicitor

Ms. Leslie Anderson,
Manager, International Programs,
Y.W.C.A.

Reverend Tom Anthony,
President,
Vancouver Refugee Council

Ms. Fiona Begg,
Barrister and Solicitor

Ms. Mary Anne Boschman,
Mennonite Central Committee

Professor Phil Bryden,
University of British Columbia

Mr. Charles M. Campbell,
West Vancouver, B.C.

Mr. Jacques Carpentier,
Nanaimo Immigrant Services

Mr. Ian Clague,
Legal Services Society

Ms. Marian Dewitt,
Vancouver, B.C.

Mr. Thomas D. Farrell,
Catholic Charities

Ms. Anne Francis,
Mosaic

Ms. Nora Greenway,
Multicultural Education Officer,
Vancouver School Board

Mr. Rod Holloway,
Legal Services Society

Ms. Mobina Jaffer,
Barrister and Solicitor

Mr. Daryl Larson,
Legal Services Society

Ms. Elizabeth Lee,
Lee and Company

Mr. Gordon Maynard,
McCrea and Associates

Mr. Dennis McCrea,
McCrea and Associates

Ms. Nancy Miller,
President,
Inland Refugee Society

Ms. Gladys Ortiy,
Surrey/Delta Immigration Services

Mr. Tim Perrin,
Barrister and Solicitor

Ms. Vera Radio,
Executive Director,
Mosaic

Mr. Phillip Rankin,
Barrister and Solicitor

Ms. Star Rosenthal,
Barrister and Solicitor

Mr. Eric Schneider,
B.C. Conference of United
Churches of Canada

Mr. Doug Soo,
Director,
Pacific Immigrant Resources
Society

Ms. Louise Sorensen,
A.M.S.S.A.

Mr. Art Specken,
Catholic Family Services

Ms. Lillian To,
Executive Director,
SUCCESS

Montreal, April 9, 1991

Mr. Joseph Allen,
Barrister and Solicitor

Ms. Rivka Augenfeld,
Présidente,
Table de concertation des
organismes de Montréal pour
les réfugiés

Mr. Jacques Beauchemin,
Barrister and Solicitor

Ms. Annie Bélanger,
Barrister and Solicitor

Mr. Denis Bellemare,
Barrister and Solicitor

Mr. Jean-François Bertrand,
Barrister and Solicitor

Mr. Denis Buron,
Barrister and Solicitor

Mr. François Crépeau,
Barrister and Solicitor

Ms. Janet Deutch,
Canadian Council for Refugees

Mr. Pierre Duquette,
Barrister and Solicitor

Mr. Waice Ferdoussi,
Barrister and Solicitor

Mr. Jean-François Goyette,
Barrister and Solicitor

Mr. Julius Gray,
McGill University

Mr. Sylvio Houle,
Barrister and Solicitor

Mr. Ian Kagedan,
Director of Government Relations,
B'nai Brith Canada

Mr. Richard Kurland,
Barrister and Solicitor

Mr. Jean Lanoue,
Barrister and Solicitor

Mr. Joel Moss,
Director,
Jewish Immigrant Aid Service

Mr. Daniel Paquin,
Barrister and Solicitor

Ms. Diane Petit,
Barrister and Solicitor

Mr. Noël St-Pierre,
Barrister and Solicitor

Ms. Melissa Singer,
Barrister and Solicitor

Mr. William Sloan,
Barrister and Solicitor

Ms. Heather Smith

Ms. Moy Tam,
Executive Director,
Ottawa–Carleton Immigrant Services Organization

Mr. Melvin Weigel,
Montreal

Ms. Juanita Westmoreland-Traoré,
Barrister and Solicitor

Ms. Joyce Yedid,
Barrister and Solicitor

CO-OPERATION WITH OTHER INSTITUTIONS

THE COMMISSION MAINTAINS CLOSE CONTACT WITH A NUMBER OF NATIONAL AND INTERNATIONAL GOVERNMENT BODIES, ASSOCIATIONS, SOCIETIES, CONFERENCES AND INSTITUTES WHICH ADVANCE LAW REFORM ISSUES.

Co-operation continued with the Canadian Judicial Council, the two legal departments of the federal government — the Department of Justice and the Department of the Solicitor General of Canada — and the House of Commons Standing Committee on Justice and the Solicitor General. The Commission maintains close ties with officials of provincial government ministries and law reform agencies and attends the annual meetings of the Law Reform Conference of Canada.

Contact is maintained with the Canadian Judges Conference, the Canadian Institute for the Administration of Justice, the Uniform Law Conference, the Canadian Criminal Justice Association and the Society for the Reform of the Criminal Law.

As in previous years, the Commission participated in the organization of the annual meeting of the Canadian Association of Law Teachers (CALT), which was held in Kingston, Ontario. This year the CALT–LRC Award for outstanding contribution to legal research and law reform was presented to Professor Edith Deleury of Laval University.

CANADIAN BAR ASSOCIATION

The Commission continues to work closely with the Canadian Bar Association, and reported as is its custom to both the mid-winter and annual meetings.

The Commission and the Canadian Bar Association Committee on Legislation and Law Reform have established a program of regular consultation meetings in response to a suggestion made by the Commission at this year's mid-winter meeting in Regina. Arrangements have also been instituted for annual meetings with members of the executive committees of various national subsections concerned with matters on the Commission's research agenda.

In September and October, the Commission was pleased to welcome Dr. Istvan Gellerthegyi, a Hungarian lawyer who came to Canada under the C.B.A.-sponsored Canada–Eastern Block Lawyer Internship Program, a six month work-study internship for outstanding law students and young lawyers from Eastern Europe. During his stay, Dr. Gellerthegyi contributed to the Commission's work on environmental issues.

Royal Commission on New Reproductive Technologies

On November 21, 1990, President Gilles Létourneau presented a brief to the Royal Commission on New Reproductive Technologies. On behalf of the Law Reform Commission, the president expressed his deep support for their deliberations, and previewed for them recommendations on the legal aspects of medically assisted procreation, based on a two-year study soon to be released as a working paper.

The president highlighted five areas of recommendations, which will be fully developed in the forthcoming working paper. The Commission feels strongly that gamete and embryo transfers should not be commercialized and that parties should be dissuaded from making so-called "commercial surrogacy" contracts. Secondly, in the interests of human rights, the Commission

From left to right:

Professor Edith Deleury, recipient of CALT–LRC Award.

Ms. Anne Marcoux, Dr. Gilles Létourneau, Mr. Derek J. Jones and Mr. François Handfield at the Royal Commission on New Reproductive Technologies.

encourages the Government to play a supportive role in nurturing procreative and family health. Thirdly, the Commission recommends the development of a standard or uniform method of reporting various medically assisted procreation procedures along with their general outcomes, including the number of national and international gametes and embryos transferred and especially, the success rates of in vitro fertilization procedures. Fourthly, in order to protect the health of those undergoing medically assisted procreation procedures the Commission recommends that regulations be implemented to ensure the proper screening and documentation of donated gametes in order to guard against the passing of AIDS. Fifthly, the Commission feels strongly that reforms in this very important area will be most effective if they are undertaken at a national level.

THE COMMISSION FEELS STRONGLY THAT GAMETE AND EMBRYO TRANSFERS SHOULD NOT BE COMMERCIALIZED AND THAT PARTIES SHOULD BE DISSUADED FROM MAKING SO-CALLED "COMMERCIAL SURROGACY" CONTRACTS. [...] [I]N THE INTERESTS OF HUMAN RIGHTS, THE COMMISSION ENCOURAGES THE GOVERNMENT TO PLAY A SUPPORTIVE ROLE IN NURTURING PROCREATIVE AND FAMILY HEALTH.

OTHER INSTITUTIONS

During the course of the year, the President, Commissioners, Project Co-ordinators and other members of the research staff received invitations from national, international and foreign bodies to speak about the work of the Commission and other law reform issues.

This year, President Létourneau was invited to speak to more than 14 different institutions both nationally and internationally on such issues as constitutional law, criminal law and procedure, environmental law and administrative law.

In April, the President was the keynote speaker at an International Conference on Constitutionalism held at the School of English and American Studies, Sussex University, England, which brought together eminent scholars and practitioners from Great Britain, United States, France, Italy and Canada. His presentation entitled "*The Canadian Charter of Rights and Freedoms:* An Instrument for Change" will appear in a forthcoming book to be published by the Fullbright Commission. During that same month, he was invited by the Paris Bar to speak on the role of the Bar in the process of law reform. He was also invited by the Research Center on Criminal Policy in Paris and by the Institute of Criminal Science in Poitiers to present the Commission's proposals for criminal law reform. Both presentations will be published in French law journals.

The president also addressed the Europe–Canada Conference on Environment and Waste, in Montpellier, France on the topic "Polluter Pays Principle — A Canadian Perspective."

Among the national bodies to whom the president spoke on matters of

concern to the Commission, are the Quebec Bar, the Quebec National Assembly, the International Centre for Comparative Criminology in Montreal, the Annual Meeting of Quebec Crown Prosecutors, and the Royal Canadian Mounted Police.

In September, the Commission co-sponsored a meeting at St. Catherine's College, Oxford University, England, which discussed the establishment of a Canadian Council of Administrative Tribunals. The meeting, which was organized in conjunction with the Canadian Bar Association Administrative Law Section was chaired by Commissioner John Frecker. It was attended by experts in the field of administrative law from Canada, the United States, Great Britain and Australia.

As previously mentioned, the Commission co-sponsored a symposium entitled "The Power of the Purse: Financial Incentives as Regulatory Instruments" at the University of Calgary in October.

In April, Professor Patrick Fitzgerald accepted an invitation to deliver a paper at the International Criminal Law Symposium held at the University of Puerto Rico. His topic was new developments in international criminal law.

ADMINISTRATION

THE ADMINISTRATION OF THE COMMISSION IS THE RESPONSIBILITY OF THE SECRETARY OF THE COMMISSION, WHO IS ITS RANKING PUBLIC SERVANT. HE IS ASSISTED BY THE DIRECTOR OF OPERATIONS.

COMMISSION MEETINGS

Subsection 9(2) of the *Law Reform Commission Act* mandates the Commission to meet at least six times in each year. Three members of the Commission constitute a quorum. This year, because of the departure of the former President and two Commissioners, a quorum was unfortunately not consistently available. Nevertheless, the Commission did hold five formal meetings and was thus able to ensure that its work was not compromised.

REGIONAL OPERATIONS

Within a year of its establishment, the Commission had opened a Quebec regional office, located in Montreal. This presence in the civil law province has proved invaluable to the Commission in the fulfilment of its statutory responsibility to reflect "the distinctive concepts and institutions of [both] the common law and civil law legal systems in Canada, and the reconciliation of differences and discrepancies in the expression and application of the law arising out of differences in those concepts and institutions" (*Law Reform Commission Act*, paragraph 11(*b*)). The Commission is well attuned to the thinking and aspirations of the legal community and the general public in Quebec.

Official Languages Policy

The Commissioner of Official Languages recognized the excellent record of the Law Reform Commission in the application of the official languages policy, and to this effect the Commission has received tributes from him which indicate "consistently high achiever." The Commission intends to maintain its record.

Legal Writing and Publications

The Legal Writing and Publications Directorate ensures the linguistic quality, in both official languages, of all texts submitted to it and is responsible for the translation, production and publication of Commission documents. The permanent staff of the Directorate consists of the Director, three editors and one legal research editor. Translation services are provided by the Translation Bureau of the Secretary of State and by a number of freelance translators. The Directorate expresses its gratitude to all of its translators for their outstanding work this year and wishes to acknowledge the special and timely contributions of Mr. Pierre Ducharme, freelance translator, and Mr. Garry Bowers, freelance editor.

Communications Services

The Communications Section is responsible for providing both public and internal communications services. In keeping with the government's communication policy, the section provides the public with information about Commission recommendations and publications through a large distribution network. It oversees the distribution of all Commission publications; answers public and media enquiries; and initiates programs of public relations through advertising, exhibits, public meetings and special projects to meet the Commission's objective of ensuring that the concerns and interests of the public are taken into account in the formulation of its recommendations.

The Commission is well attuned to the thinking and aspirations of the legal community and the general public in Quebec.

Library

The library of the Law Reform Commission maintains a core collection of Canadian and foreign legal materials and publications of other law reform bodies around the world. Books and documents in other fields are acquired as needed, depending on the priorities of the Commission's projects. The library provides reference and inter-library loan services to support the needs of its researchers.

General Administration

Included under these services are mail and records management; material, property and telecommunications management; text processing and secretarial services; printing and duplicating services; and personnel services and contract administration.

Personnel

During the fiscal year ending March 31, 1991, the personnel strength of the Commission varied according to seasonal and functional factors. The Commission used the services of research consultants retained on a contractual basis for varying lengths of time during that period. All of the support staff, with the occasional exception of temporary office assistants, are public servants. The Commission this year used 35 of its 36 authorized person-years.

The Commission acknowledges the invaluable assistance of certain temporary employees who are not included in the person-year figure.

FINANCES

For the 1990-91 fiscal year, the Commission was allotted a budget of $4,841,000 plus a sum of $224,793 in adjustments and transfers. Of that amount, $4,781,091 was spent by the organization. A detailed budget appears below. Figures are still subject to final audit.

FISCAL YEAR 1990-91

	$	$
Operating Budget		***5,065,793***
(including adjustments and transfers)		
*EXPENDITURES BY STANDARD OBJECT**		
01 Personnel Salaries & Wages	*2,136,022*	
02 Transportation & Communications	*439,971*	
03 Information	*108,930*	
04 Professional & Special Services	*1,802,056*	
05 Rentals	*40,883*	
06 Purchased Repair & Upkeep	*37,463*	
07 Utilities, Materials and Supplies	*156,748*	
09 Furniture and Equipment	*58,858*	
12 Other Expenditures	*160*	
TOTAL	***4,781,091***	
Amount unspent		***284,702***

* Figures supplied by Supply and Services Canada

VISITORS

DURING THE YEAR, THE COMMISSION WAS PLEASED TO RECEIVE THE FOLLOWING VISITORS:

Mr. Patrick Birkenshaw,
Lecturer in Law,
Hull University,
Hull, England

Professor Alberto Cadoffi,
University of Trento,
Trento, Italy

Professor Helen Gamble,
Wollongong University,
Wollongong, New South Wales

Professor Sergei Kazantsev,
Lenningrad University,
Lenningrad, U.S.S.R.

Professor Denis Lemay,
Documentation Adviser,
Laval University,
Quebec, Canada

Professor Norman Lewis,
Hull University,
Hull, England

Professor Udo Mayer,
Hamburg School of Economics,
Hamburg, Germany

Mr. Ovide Mercredi,
Regional Chief,
Assembly of First Nations,
Ottawa, Canada

Professor Luigi Startori,
Universty of Trento,
Trento, Italy

Professor William Way,
University of Sheffield,
Sheffield, England

APPENDICES

APPENDIX A
COMMISSION RECOMMENDATIONS — 1990-1991

REPORT 33*
RECODIFYING CRIMINAL PROCEDURE
VOLUME ONE: POLICE POWERS
TITLE I: SEARCH AND RELATED MATTERS

CODE OF CRIMINAL PROCEDURE
VOLUME ONE: POLICE POWERS
TITLE I: SEARCH AND RELATED MATTERS

PART ONE: GENERAL

To the extent possible, we have included general rules of interpretation, standard provisions and definitions in the general part of our proposed Code of Criminal Procedure. This approach avoids inconsistency and duplication. Evidence of the Commission's efforts to be comprehensive in its codification of the existing law is also to be found in the general part. We have tried to clarify and simplify definitions and phrases found in the current *Criminal Code* and at common law.

* *Since the recommendations are in legislative form and are too lengthy to be reproduced in this appendix, the annotated table of contents of Report 33 is set out below.*

PART TWO: SEARCH AND SEIZURE

Given the protection in section 8 of the *Charter* against unreasonable search and seizure, the Commission has taken care to ensure, as best it can, that its recommendations in this area meet constitutional standards. Central to its recommendations are the features recognized by the Supreme Court of Canada in *Hunter* v. *Southam Inc.*[*] as being at the core of the purposes of section 8: authorization by an impartial judicial officer, particularity in the power granted, and accountability. These are provided for in the Commission's proposals through a general warrant requirement for searches of persons, places and vehicles, provisions defining the scope of search and seizure powers and the manner of their exercise, and procedures ensuring that an adequate record is made of the application process. While the Commission's preference is for warrants authorizing these powers, it also recognizes exceptions for exigent circumstances and searches with consent. An innovation in the Commission's proposals is that they apply to searches for confined persons, as well as evidence and contraband. The Commission's principal recommendations can be summarized under the following headings: defining the scope of search and seizure powers, procedures for obtaining and issuing warrants and the manner of executing searches and seizures.

PART THREE: OBTAINING FORENSIC EVIDENCE

Our draft legislation on forensic evidence provides a complete code governing the taking of evidence from a suspect's body. Such procedures as making dental impressions, taking hair and body samples, and searching a suspect's body for identifying marks are dealt with in this part. With the advent of new sophisticated forensic tests for linking suspects to certain kinds of crime, such as DNA genotyping, these kinds of forensic procedures are going to become more important in the future. What is needed is a legal regime to govern them. In large measure, this area of criminal law is unregulated at present. There is some case-law developing under section 8 of the *Charter*, but these cases offer little certainty in terms of the authority for conducting these tests, the range of procedures permitted, the duties on the police and the rights of the suspect. The Commission's draft legislation deals with these issues in a comprehensive way.

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[*] [1984] 2 S.C.R 145.

PART FOUR: TESTING PERSONS FOR IMPAIRMENT IN THE OPERATION OF VEHICLES

The provisions in the *Criminal Code* empowering police to demand from motorists breath samples and, in certain circumstances, blood samples, have been the subject of a good deal of debate in recent years as concern has grown over the problem of impaired driving. Amendments are made to these provisions regularly, the most recent having been enacted in 1988. The Commission does not propose any drastic changes to this area of police powers. Perhaps the most striking Commission recommendation was made in 1988 in Report 31 entitled, *Recodifying Criminal Law*. There the Commission proposed that the offence of refusing to provide a breath sample for roadside screening purposes be abolished. In its place would be a police power to demand from a person refusing to give a roadside sample a breath sample for a breathalyzer machine. The provisions set out in this Part of the Commission's Code comply with that earlier recommendation. While the Commission does not advance a scheme in this area that departs greatly from the present law, it does make proposals with respect to the following two aspects of the current legislation: fairness and blood sample procedures.

Part Five: Electronic Surveillance

The *Criminal Code* contains detailed provisions dealing with the power of peace officers to intercept private communications. This legislation was enacted in the 1970s and has given rise to much litigation, particularly in relation to its compliance with section 8 of the *Charter*, which guarantees protection against unreasonable searches and seizures. The Commission's proposals in this area attempt to bring this area of the law into clear compliance with section 8. In addition, it has attempted to bring to this complex and intrusive area of the law greater clarity, efficiency, and accountability. The present *Code* provisions apply to a list of enumerated offences and offences punishable by imprisonment for five years or more "that there are reasonable grounds to believe [are] part of a pattern of criminal activity planned and organized by a number of persons acting in concert" (s. 183). This approach is uncertain in that revisions are often made to the list and the test for defining the kinds of offences to which these powers should be applied is rather vague. The Commission proposes simply that this Part apply to offences punishable by more than two years' imprisonment.

Part Six: Disposition of Seized Things

The present *Criminal Code* contains procedures dealing with the disposition of things after seizure by peace officers in the course of a criminal investigation. In Report 27, *Disposition of Seized Property*, the Commission suggested amendments that should be made to improve the provisions in the *Code*. The Commission was of the view that a comprehensive scheme should be provided in the Commission *Code*, one which would apply to the seizure of things conducted under any criminal statute, not just the *Criminal Code*, as is presently the case. Our comprehensive scheme is set out in this Part of our Code. Paramount in the Commission's recommendations is the need to treat fairly those from whom property has been seized.

PART SEVEN: PRIVILEGE IN RELATION TO SEIZED THINGS

Throughout its Code, the Commission has shown a concern for the protection of privilege. Thus, in Part Two - *Search and Seizure*, we recommended procedures that should apply where a claim of privilege is made in relation to seized documents. In Part Five - *Electronic Surveillance*, we proposed measures to protect against intrusions into solicitor-client privilege in the process of intercepting private communications. In this Part, the Commission sets out its proposals for dealing with claims of privilege made in relation to seized things. The procedures recommended in Part Six - *Disposition of Seized Property* with respect to the preparation of inventories and post-seizure reports apply equally to this Part. The principle concern is that existing procedures are not broad enough to deal with these claims adequately.

WORKING PAPER 62

CONTROLLING CRIMINAL PROSECUTIONS: THE ATTORNEY GENERAL AND THE CROWN PROSECUTOR

AN INDEPENDENT PROSECUTION SERVICE

1. To ensure the independence of the prosecution service from partisan political influences, and reduce potential conflicts of interest within the Office of the Attorney General, a new office should be created, entitled the Director of Public Prosecutions. The Director should be in charge of the Crown Prosecution Service, and should report directly to the Attorney General.

2. The Director of Public Prosecutions should not be a civil-service appointment. The Director should be appointed by the Governor in Council, and chosen from candidates recommended by an independent committee.

3. The Director should be appointed for a term of ten years, and should be eligible to be reappointed for one further term.

4. The Director should be removable before the expiry of a term. The grounds for possible removal should be misbehaviour, physical or mental incapacity, incompetence, conflict of interest, and refusal to follow formal written directives of the Attorney General.

5. The Director should only be removable by a vote of the House of Commons, on the motion of the Attorney General, following a hearing before a Parliamentary committee.

6. The Director should be paid the same salary and receive the same pension benefits as a judge of the Federal Court of Canada.

7. The Attorney General should have the power to issue general guidelines, and specific directives concerning individual cases, to the Director. Any such guidelines or directives must be in writing, and must be published in the *Gazette* and made public in Parliament. If it is necessary in the interests of justice, the Attorney General may postpone making public a directive in an individual case until the case concerned has been disposed of.

8. The Director should have the power to issue general guidelines, and specific directives concerning individual cases, to Crown prosecutors. Any general guidelines must be in writing, and must be published in an annual report by the Director to Parliament.

9. The Director should have all of the criminal-law-related powers of the Attorney General, including any powers given to the Attorney General personally. The Attorney General should also retain these powers.

10. The budget for the Office of the Director of Public Prosecutions should be included as a line item within the budget of the Attorney General. Control over the funds allocated to the office should rest with the Director, not with the Attorney General.

Ministerial Responsibility for the Police

11. Ministerial responsibility for the police should not be the responsibility of the Attorney General. Policing should continue to be the responsibility of a separate minister.

12. The Department of the Solicitor General should be renamed the Department of Police and Corrections.

13. Section 2 of the present *Criminal Code*, which defines the Attorney General as including the Solicitor General, should be amended to delete reference to the Solicitor General, and reference to the Minister of Police and Corrections should not be added.

14. The Attorney General and the public prosecutor should have the power to require the police to make further inquiries once a prosecution has been launched to assist in the proper presentation of the prosecution's case and discovery of evidence tending to establish the guilt or innocence of the accused.

Responsibility for Public Prosecutions

15. All public prosecutions should be conducted by a lawyer responsible to, and under the supervision of, the Attorney General.

16. The personal consent of the Attorney General should not be required prior to the prosecution of any crime.

17. The Attorney General and the public prosecutor should continue to have the power to take over any private prosecution.

18. Police officers should continue to have the ultimate right and duty to determine the form and content of charges to be laid in any particular case according to their best judgment and subject to the Crown's right to terminate the prosecution.

19. Before laying a charge before a justice of the peace, the police officer shall obtain the advice of the public prosecutor concerning the facial and substantive validity of the charge document, and concerning the appropriateness of laying charges. Legislation setting out the duties of the public prosecutor should be amended, if required, to state this duty explicitly.

20. When seeking the advice of the public prosecutor, the police officer shall advise the prosecutor of all the evidence in support of the charge and all the circumstances of the offence, and the prosecutor shall where appropriate advise the police officer either that the evidence is not sufficient to support a conviction for the charge, or that a different charge or no charge would be more appropriate in all the circumstances.

21. Where it is impracticable to have the charge examined by the public prosecutor, or if the public prosecutor advises against proceeding with the charge, the peace officer nevertheless may lay the charge before a justice of the peace. In such cases, the peace officer must provide reasons to the justice of the peace explaining why it was impracticable to have the charge examined, or if applicable, must disclose that the public prosecutor has advised against the laying of the charge.

Guidelines for the Initiation of Prosecutions

22. Prosecutorial guidelines should be published by the Attorney General dealing with the initiation of criminal proceedings. These guidelines should state, in broad terms, the factors that should and should not be considered in advising whether to initiate proceedings.

23. The factors stated in the guidelines should include: (1) whether the public prosecutor believes there is evidence whereby a reasonable jury properly instructed could convict the suspect; and if so, (2) whether the prosecution would have a reasonable chance of resulting in a conviction. The prosecutor should also take into account: (3) whether considerations of public policy make a prosecution desirable despite a low likelihood of conviction; (4) whether considerations of humanity or public policy stand in the way of proceeding despite a reasonable chance of conviction; and (5) whether the resources exist to justify bringing a charge.

Control over the Forum of Trial

24. Where there is a choice of trial forum following an election by an accused, the choice should remain that of the public prosecutor.

25. When the crime charged is punishable by more than two years imprisonment, the Attorney General may personally require, notwithstanding any election by the accused, that the accused be tried by a court composed of a judge and jury. When a trial by jury is required under this section, a preliminary hearing will be held unless one has been held prior to the direction of the Attorney General.

26. The exceptions in section 469 of the *Criminal Code*, placing certain offences within the absolute jurisdiction of a superior court of criminal jurisdiction, and section 473 of the *Criminal Code*, giving an accused the right to waive the jury for those offences, should be repealed.

PREFERRED INDICTMENTS

27. The power of the Attorney General to prefer a charge should be retained.

28. A judge may make a termination order stopping the proceedings, if it is shown that the preferment of the charge constitutes an abuse of process.

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29. The Attorney General personally may prefer a charge notwithstanding that the accused has not had a preliminary hearing. The court in which the charge is preferred may adjourn the proceedings until the accused has been given full and fair disclosure of the prosecution case, including, when so ordered, signed witness statements.

30. The Attorney General shall provide the accused against whom a direct charge has been preferred reasons for the preferment.

31. Guidelines should be established by and published for the use of the Attorney General in deciding whether to prefer a charge when no preliminary hearing has been held. The guidelines should indicate that preferment is an exceptional procedure to be used only in rare and extraordinary circumstances, and that the Attorney General may consider, among others, the following factors:

(a) the fear that the security of the prosecution's witnesses or of other persons involved in the prosecution is jeopardized;

(b) the need to try the charge as soon as possible in order to preserve the Crown's case;

(c) the need to avoid a multiplicity of proceedings; and

(d) the need to avoid unconscionable delay or unduly prolonged proceedings that cannot otherwise be avoided.

32. When a preliminary hearing has been held, and the accused discharged, no charge may be preferred without the consent of a judge of the intended trial court. The judge shall consent only if satisfied (following submissions from the parties) that the judge at the preliminary hearing applied an erroneous legal principle, or that the accused committed a fraud on the administration of justice, which resulted in the discharge of the accused.

Reopening of Preliminary Inquiry

33. When an accused has been discharged upon the completion of a preliminary hearing and fresh evidence is subsequently discovered, an application may be made to the judge who presided at the preliminary hearing, or if that judge is unavailable, to another judge of that court, to reopen the preliminary hearing. The judge may order that the preliminary hearing be re-opened if it is shown that:

(a) the application was brought within a reasonable time after the discharge;

(b) the evidence could not have been adduced by due diligence at the preliminary hearing;

(c) the evidence bears upon a decisive issue, or potentially decisive issue;

(d) the evidence is reasonably capable of belief; and

(e) the evidence is such that taken with the other evidence adduced at the preliminary hearing it could reasonably be expected to have affected the result.

Discontinuation of a Prosecution

34. The Attorney General's statutory power to stay proceedings and common-law power to withdraw charges should be abolished. Those powers should be replaced by a statutory power to discontinue proceedings, by entering either a temporary or permanent discontinuance.

35. A permanent discontinuance bars any further proceedings against the accused on the same charge or for substantially the same crime that is the subject of the order.

36. A temporary discontinuance stops the immediate prosecution of charges against the accused, but allows a later prosecution on the same charge or for substantially the same crime that is the subject of the order, within an appropriate limitation period.

37. (1) A discontinuance must state whether it is permanent or temporary.

(2) If new proceedings are not commenced following a temporary discontinuance within the appropriate limitation period, the temporary discontinuance shall become a permanent discontinuance.

38. The Attorney General or the public prosecutor may enter a permanent discontinuance in any prosecution, whether it has been commenced by a police officer or a private prosecutor.

39. A permanent discontinuance must be entered in open court, after a decision has been made to issue process but prior to verdict.

40. Prosecutorial guidelines should be published by the Attorney General setting out factors to be considered when permanently discontinuing a prosecution. They should state, in broad terms, the factors that may be considered in determining whether to permanently discontinue proceedings, and the factors that should not be considered.

41. The Attorney General or the public prosecutor may enter a temporary discontinuance in any prosecution of which they have carriage, whether it has been commenced by a police officer or a private prosecutor.

42. A temporary discontinuance must be entered in open court, after a decision has been made to issue process but prior to the close of the Crown's case. The Attorney General or the public prosecutor must indicate to the court the reasons for entering the temporary discontinuance.

43. When a temporary discontinuance is entered, the limitation period for commencing later proceedings shall be governed in accordance with the recommendations in the forthcoming Working Paper *Trial Within A Reasonable Time*.

44. A discontinuance vacates any appearance notice or undertaking made in respect of the proceedings which are discontinued. If later proceedings are commenced following a temporary discontinuance, arrangements to compel the appearance of the accused should be made in accordance with the recommendations in Working Paper 57, *Compelling Appearance, Interim Release and Pre-trial Detention*.

45. If proceedings are temporarily discontinued, later proceedings may be commenced either on a new charge document or on the original charge document.

WORKING PAPER 63
DOUBLE JEOPARDY, PLEAS AND VERDICTS

PROSECUTION FOR EACH CRIME PERMITTED UNLESS RULES AGAINST DOUBLE JEOPARDY APPLY

1. Where the conduct of an accused with respect to the same transaction makes it possible to establish the commission of more than one crime, it should be possible to prosecute the accused for each crime, subject to the following recommendations protecting against double jeopardy.

RULE AGAINST SEPARATE TRIALS

2. (1) Unless otherwise ordered by the court in the interests of justice – such as preventing prejudice – or unless the accused acquiesces in a separate trial, an accused should not be subject to separate trials for multiple crimes charged or for crimes not charged but known at the time of the commencement of the first trial that:

(a) arise from the same transaction;

(b) are part of a series of crimes of similar character (evidence of each of which is admissible in proof of the others);

(c) are part of a common scheme or plan; or

(d) are so closely connected in time, place and occasion that it would be difficult to separate proof of one from proof of the other(s).

(2) When the accused is unrepresented, the express consent of the accused to separate trials should be obtained.

(3) In assessing whether it is in the interests of justice to have separate trials, a court should be permitted to consider, among other factors:

(a) the number of charges being prosecuted;

(b) whether the effect of the multiple charges would be to raise inconsistent defences;

(c) whether evidence introduced to support one charge would prejudice the adjudication on the other charge(s);

(d) whether the case is to be tried by a judge alone or with a jury; and

(e) the timing of the motion for severance.

No Subsequent Trial for the Same or Substantially the Same Crime

3. (1) An accused should not be tried for the same or substantially the same crime for which the accused has been acquitted, convicted, discharged pursuant to what is currently subsection 736(1), or pardoned.

(2) An accused should not be tried for a crime that was included in the crime of which the accused was acquitted, convicted, discharged pursuant to what is currently subsection 736(1), or pardoned, or that was an element of one of the alternative ways specified by statute of committing the crime of which the accused was acquitted, convicted, discharged or pardoned.

(3) An accused should not be tried for a crime if the accused has been previously acquitted or convicted, discharged pursuant to what is currently subsection 736(1), or pardoned in relation to a crime included in, or specified by statute as an element of, one of the alternative ways of committing that crime.

Rule against Multiple Convictions

4. (1) Where an accused is charged with more than one crime arising out of the same transaction, it should be possible to register a conviction against the accused for only one of the crimes charged, where:

(a) the other crimes are included in, or are specified by the statute as elements of alternative ways of committing the crime upon which the conviction has been registered;

(b) the other crimes consist only of a conspiracy to commit the crime upon which the conviction has been registered;

(c) the other crimes are, in the circumstances, necessarily encompassed by the crime upon which the conviction has been registered;

(d) the other crimes are alternatives to the crime upon which the conviction has been registered;

(e) the crimes differ only in that the crime upon which the conviction has been registered is defined to prohibit a designated kind of conduct generally and the other crimes to prohibit specific instances of such conduct; or

(f) the crimes charged constitute a single, continuous course of conduct that the statute defines as a single, continuing crime.

(2) This rule should not apply when the statute expressly provides for a conviction to be registered for more than one crime, or, in the case of a continuing course of conduct, where the law provides that specific periods of such conduct constitute separate crimes.

Inconsistent Judgments

5. (1) A prosecution for a crime should be barred if a conviction or acquittal on a charge at a former trial necessarily required a determination of a factual or legal issue inconsistent with the determination of an identical issue that must be made in order for a conviction to be made on a different charge at a subsequent trial of the same accused.

(2) Recommendation 5(1) should not apply to a subsequent trial for perjury [perjury or making other false statements] if proof of the crime is made by calling additional evidence not available through the use of reasonable diligence at the time of the first trial.

(3) Nothing in these recommendations should be seen as preventing the courts from further developing the law on inconsistent judgments.

Effect of Foreign Judgments

6. (1) Where a person is charged in Canada with the same or a substantially similar crime for which the person was acquitted or convicted by a court of competent jurisdiction in a foreign state, the foreign acquittal or conviction should have the same effect as a judgment in Canada if:

(a) the foreign state took jurisdiction over the crime and the accused on the same or similar basis as could have been exercised by Canada; or

(b) Canada acquiesced in the claim by the other state to jurisdiction.

(2) For purposes of Recommendation 6(1), where a person has been convicted in his absence by a court outside Canada and was not, because of such absence, in peril of suffering any punishment that the court has ordered or may order, the court in Canada should have the power to disregard that conviction and proceed with the trial in Canada.

(3) A foreign conviction should not include a judgment made in the absence of the accused that would be annulled upon the return of the accused so that a trial on the charge could then proceed.

Application of Rules against Double Jeopardy to Federal Offences

7. Where an act or omission is punishable under more than one Act of Parliament, and unless a contrary intention appears, the offender could be subject to proceedings under any of those Acts, but should not be liable to be punished more than once for that act or omission.

Abuse of Process

8. Nothing in this Part should limit the power of a court to stay any proceedings on the ground that they constitute an abuse of the process of the court.

Double Jeopardy Issues May Be Raised in Pre-trial or Trial Motions

9. (1) Challenges to the validity of criminal proceedings involving double jeopardy should be capable of being raised either by way of pre-trial motion or as trial motions.

(2) Any issue involving double jeopardy may, in the discretion of the trial court, be disposed of before or after plea is entered.

Effect of Pre-trial or Trial Motions on Double Jeopardy Issues

10. Where double jeopardy issues are decided in favour of the accused, the court, subject to Recommendation 12, should terminate the prosecution on the relevant charge by means of a termination order.

Evidentiary Matters to Determine Whether the Person Has Been Previously Acquitted or Convicted of the Same Crime

11. Where a double jeopardy issue under Recommendation 3 is being tried, the evidence and adjudication and the notes of the judge and official stenographer on the former trial and the record transmitted to the court on the charge that is pending before that court, should be admissible in evidence to prove or to disprove the identity of the charges.

Effect on Verdicts When the Rule against Multiple Convictions Applies

12. (1) Where an accused pleads not guilty to more than one crime arising out of the same transaction and where the rule against multiple convictions applies, the accused:

(a) if acquitted of the crime for which the prosecution seeks a conviction, on appropriate evidence of guilt should be convicted of the crime equal or closest to it in terms of gravity or seriousness; or

(b) if convicted of the crime for which the prosecution seeks a conviction, on appropriate evidence of guilt should have a verdict of conviction pronounced, but not entered, on the other crimes, and a conditional stay should be entered in relation to those crimes.

(2) If the accused, having been charged with more than one crime, pleads guilty to a crime charged other than the one the prosecution wishes to prosecute, the plea should be held in abeyance until a verdict on the prosecution's charge has been pronounced and, if the rule against multiple convictions applies, the accused:

(a) if acquitted of the crime for which the prosecution seeks a conviction, should be convicted of the crime for which the accused pleaded guilty; or

(b) if convicted of the crime for which the prosecution seeks a conviction, should have a verdict of conviction pronounced, but not entered, against him or her for the crime in relation to which the plea of guilty was entered, and a conditional stay should be entered in relation to such crime.

Codification of Pleas

13. Only those pleas expressly set out in the Code of Criminal Procedure (LRC) should be recognized.

Plea of Not Guilty or Guilty

14. An accused who is called upon to plead to a crime charged should plead not guilty or guilty.

Defences under the Plea of Not Guilty

15. Any defence set out in the proposed Criminal Code (LRC) should be permitted to be relied upon under the plea of not guilty.

Who Appears

16. (1) Where the crime charged is punishable by more than two years' imprisonment, the accused should appear in court in person or, where the accused, the court and the prosecutor consent, in writing or by telephone or other means of communication.

(2) Where the crime charged is punishable by two years' imprisonment or less, the accused, without having to obtain prior consent, should be allowed to appear in person, by counsel or agent, in writing, or by telephone or other means of communication, unless the court requires the accused to appear in person.

(3) If the accused is a corporation, the corporation should appear by counsel or agent for the corporation, and

(a) where the crime is punishable by more than two years' imprisonment, counsel or agent should appear in court in person or, where counsel or agent, the court and the prosecution consent, in writing, or by telephone or other means of communication; or

(b) where the crime charged is punishable by two years' imprisonment or less, counsel or agent, without the need to obtain prior consent, should be allowed to appear in person, in writing, or by telephone or other means of communication;

unless the court requires the counsel or agent to appear in person.

Failure to Appear at a Scheduled Appearance

17. (1) Where an accused is charged with a crime punishable by more than two years' imprisonment and fails to appear on a scheduled appearance date other than for trial, the court should adjourn the matter and may compel the appearance of the accused by the issuance of a warrant.

(2) Where an accused is charged with a crime punishable by two years' imprisonment or less and fails to appear on a scheduled appearance date other than for trial, the court may proceed to fix a date for trial or may adjourn the matter, and may compel the appearance of the accused by the issuance of a warrant.

Reading the Charge

18. (1) When an accused appears in court to plead to the charge, the accused should be called and the substance of the charge should be read.

(2) Where there is more than one count in an information or indictment [charge document], each count should be read separately to the accused.

(3) Where the accused appears by counsel or agent because the accused is not present or is a corporation, the substance of each charge should be read to the counsel or agent.

(4) The accused or counsel or agent of the accused should be permitted to waive the reading of the charge, and in its stead the court, when asking the accused or counsel or agent of the accused to plead, should state the general nature of the charge in summary form.

(5) Any waiver of the reading of charges should be informed.

Who Pleads

19. (1) Where the crime charged is punishable by more than two years' imprisonment, the accused should plead personally.

(2) Where the crime charged is punishable by two years' imprisonment or less, the accused should be permitted to plead personally or by counsel or agent, unless the court requires the accused to plead personally.

(3) Where the accused is a corporation, the plea should be entered by counsel or agent for the corporation.

When to Arraign and Plead, and Postponement of Plea

20. (1) A person charged with a crime punishable by two years' imprisonment or less should be permitted to be arraigned and to plead on first appearance, but otherwise should be arraigned and should plead on second appearance or on a date fixed by the judge at first appearance.

(2) A person charged with a crime punishable by more than two years' imprisonment, after making an election as to preliminary inquiry and mode of trial, should

(a) if the election is to be tried by a judge without a preliminary inquiry being held, plead before the judge; or

(b) if the election is to have a preliminary inquiry, plead before the trial judge if a determination has been made at the conclusion of the preliminary inquiry that the accused be committed to stand trial.

(3) A judge who believes that the accused should be allowed further time to plead should be permitted to adjourn the proceedings to a later time in the session or sittings of the court, or to the next or any subsequent session or sittings of the court, upon such terms as the judge considers proper.

Taking the Plea

21. (1) After reading the charge or after waiver of such reading, the court should ask the accused or, where the accused is not present or is a corporation, counsel or agent appearing on behalf of the accused, to plead not guilty or guilty.

(2) Where there is more than one count in an information or indictment [charge document], the accused or, where the accused is not present or is a corporation, counsel or agent appearing on behalf of the accused, should be asked to plead to each count separately.

(3) Where the court and the prosecution consent, an accused or counsel or agent of the accused should be permitted to plead in writing or by telephone or other means of communication.

(4) Where an accused who is represented by counsel pleads guilty, a judge should normally accept the plea.

(5) Where the prosecutor intends to apply to have the accused found to be a dangerous offender following conviction, before accepting a plea of guilty the judge should ascertain that the accused has had prior notice of the application.

(6) Where an accused who is unrepresented by counsel or who is represented by an agent who is a lay person pleads guilty, the judge should only accept the plea after addressing the accused personally and determining that the accused:

(a) understands that he or she has the choice between pleading not guilty or guilty;

(b) understands the nature of the charge;

(c) understands that by so pleading, the right to a trial on the charge, the right to have the prosecutor prove guilt beyond a reasonable doubt, and the right to make full answer and defence are waived; and

(d) knows the mandatory minimum sentence, if any, for the crime charged.

(7) The judge should be able, before any plea of guilty is accepted from an accused and where the judge considers it necessary to do so, to ascertain by questioning whether any inducement to plead guilty, other than an inducement disclosed as part of a plea agreement, has been offered to the accused.

(8) The judge should be able, before any plea of guilty is accepted from the accused, to make such inquiry as the judge considers necessary in order to be satisfied that a factual basis for the plea exists.

(9) The judge should reject a plea of guilty from an accused if the judge has reasonable grounds to believe that the plea was improperly induced or that no factual basis for the guilty plea exists.

Failure to Plead

22. Where an accused fails to plead, the judge should order the clerk of the court to enter a plea of not guilty.

Failure to Appear at Trial

23. (1) Where the crime charged is punishable by more than two years' imprisonment and the accused fails to appear at the commencement of the trial, the court should adjourn the matter and may compel the appearance of the accused by the issuance of a warrant.

(2) Where the crime charged is punishable by two years' imprisonment or less and the accused fails to appear at the commencement of the trial, the court should be permitted to:

(a) continue the proceedings and render a verdict; or

(b) adjourn the proceedings and compel the appearance of the accused by the issuance of a warrant.

(3) Where an accused fails to appear during trial, the court should be permitted to:

(a) continue the proceedings and render a verdict; or

(b) adjourn the proceedings and compel the appearance of the accused by the issuance of a warrant.

(4) In determining whether to continue or adjourn the criminal proceedings, the court should have regard to:

(a) whether counsel for the accused is present;

(b) any reasons known to the prosecutor or to counsel for the accused as to why the accused is not present in court;

(c) whether a jury has been empaneled;

(d) whether substantial inconvenience to witnesses will result if the proceedings are not continued; and

(e) the history of the attendance of the accused in relation to the charge.

Withdrawal of Guilty Plea

24. Following the acceptance of a plea of guilty, the accused should be permitted to withdraw the plea at any time before sentence where the judge has reasonable grounds to believe that:

(a) the accused had no prior notice of the prosecutor's intention to make a dangerous offender application;

(b) the plea was entered as a result of an improper inducement or without a proper understanding that the accused could choose to plead not guilty to the charge;

(c) the accused did not properly understand the nature of the charge or the effects of pleading guilty to it; or

(d) the accused did not know the mandatory minimum sentence, if any, for the crime charged.

Guilty Plea to Crimes Arising Out of the Same Transaction

25. (1) Where an accused pleads not guilty to the crime charged but guilty to any other crime arising out of the same transaction, whether or not it is an included crime, the court, provided the prosecutor consents, should be permitted to accept such plea of guilty and, if it is accepted, the court should find the accused not guilty of the crime charged, guilty of the crime in respect of which the plea of guilty was accepted, and should enter those findings in the record of the court.

(2) The judge should reject a guilty plea if the judge has reasonable grounds to believe that the crime to which the accused was pleading guilty inadequately reflects the gravity of the provable conduct of the accused.

Plea of Guilty to Crimes Committed in Other Jurisdictions

26. (1) Where a crime is alleged to have been committed elsewhere in the province or in another province, an accused should be permitted to appear before a court or judge that would have jurisdiction to try the crime had it been committed in the place where the accused is, if:

(a) in the case of proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government, the Attorney General of Canada consents; or

(b) in any other case, the Attorney General of the province in which the crime is alleged to have been committed consents.

(2) Where the accused pleads guilty to that crime, the court or judge should determine the accused to be guilty of the crime and impose the punishment warranted by law.

(3) An accused who does not plead guilty and is in custody prior to appearance should be returned to custody and should be dealt with according to law.

Codification of Verdicts

27. Our criminal law should only recognize verdicts expressly set out in the proposed Code of Criminal Procedure (LRC).

Verdict of Not Guilty

28. Upon a determination of not guilty being made, the court should enter a verdict of not guilty.

Verdict of Guilty

29. Upon a determination of guilt being made after trial or upon a plea of guilty entered by an accused before the court, the court should enter a verdict of guilty.

Special Verdict of Not Liable by Reason of Mental Disorder

30. Where, at the trial of the accused, evidence is adduced that the accused was, by reason of mental disorder, incapable of appreciating the nature or consequences of the conduct or of appreciating that the conduct constitutes a crime, the court, upon finding that the accused engaged in the conduct while under such mental disorder, should

enter a verdict of not liable by reason of mental disorder.

Conviction for Included Crimes

31. Every one charged with committing a crime may on appropriate evidence be convicted of committing or attempting to commit any included crime or a crime specified by the statute as an element of one of the alternative ways in which a crime charged may be committed.

Definition of Included Crimes

32. (1) A crime should be included in the crime charged where:

(a) necessarily included in the statutory definition of the crime charged; or

(b) the proposed Criminal Code or the proposed Code of Criminal Procedure (LRC) expressly provides that the accused may be alternatively convicted of that crime.

(2) A crime should not be included in the crime charged merely because, as a matter of drafting, the charge contains elements beyond those necessary to identify the cognate crime.

Conviction for a Crime Specified as an Element of One of the Alternative Ways in Which a Crime Charged Can Be Committed

33. A person may be convicted of any crime specified in the statutory definition of a crime charged as an element of one of the alternative ways of committing the crime charged.

Alternative Conviction for Attempt, Furthering, or Attempted Furthering

34. (1) Every one charged with committing a crime may on appropriate evidence be convicted of committing it, furthering it, attempting to commit it or attempted furthering of it.

(2) Every one charged with furthering the commission of a crime may on appropriate evidence be convicted of committing it, furthering it, attempting to commit it, or attempted furthering of it.

(3) Every one charged with attempting to commit a crime may on appropriate evidence be convicted of attempting to commit it or attempted furthering of it, regardless of whether the evidence shows that the person committed the crime or furthered the crime.

(4) Every person charged with attempted furthering of a crime may on appropriate evidence be convicted of attempting to commit it or attempted furthering of it, regardless of whether the evidence shows that the person committed the crime or furthered the crime.

(5) Where two or more persons are involved in committing a crime but the evidence does not clearly establish which of them committed the crime and which of them furthered it, all of them may be convicted of furthering the crime.

(6) Where two or more persons are involved in attempting to commit a crime but the evidence does not clearly establish which of them attempted to commit the crime and which of them attempted furtherance of the crime, all of them may be convicted of attempted furthering of the crime.

Motion for Verdict of Not Guilty

35. (1) At the close of the Crown's case, the accused should be permitted to move for a verdict of not guilty on the crime charged.

(2) Where satisfied that there is no evidence of the crime charged, the judge should enter a verdict of not guilty.

(3) When there has been a verdict of not guilty on the crime charged, the trial should be permitted to proceed on any other charge or included crime not affected by the verdict.

Taking a Jury Verdict

36. The taking of a jury verdict should be permitted to be made on any day of the week.

APPENDIX B
REPORTS TO PARLIAMENT

The Reports, along with the response of Parliament and other institutions to our recommendations, are listed below.

1. EVIDENCE (1975). 115 pp.

Canadian Charter of Rights and Freedoms, Constitution Act, 1982, Part I of Schedule B, *Canada Act 1982*, c. 11 (U.K.), s. 24(2) (proposed Evidence Code, s. 15).

Bill S-33, *An Act to give effect, for Canada, to the Uniform Evidence Act adopted by the Uniform Law Conference of Canada*, first reading November 18, 1982, Senator Olson.

Young Offenders Act, S.C. 1980-81-82-83, c. 110 (proposed Evidence Code ss. 16, 26, 51).

An Act to enact the Access to Information Act and the Privacy Act, to amend the Federal Court Act and the Canada Evidence Act, and to amend certain other Acts in consequence thereof, S.C. 1980-81-82-83, c. 111 (proposed Evidence Code ss. 43(4), 89(*c*)).

An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125 (proposed Evidence Code s. 88(*b*)).

2. GUIDELINES: DISPOSITIONS AND SENTENCES IN THE CRIMINAL PROCESS (1976). 71 pp.

Young Offenders Act, S.C. 1980-81-82-83, c. 110.

Publication of a policy paper by the Government of Canada, *Sentencing* (February 1984).

An Act to amend the Criminal Code (victims of crime), S.C. 1988, c. 30.

Proposed Amendments to the *Parole Act* and the *Penitentiary Act*, the Solicitor General of Canada, August 16, 1988.

Bill C-154, *An Act to establish the office of the Correctional Investigator*, first reading August 25, 1988, the Solicitor General of Canada.

Bill C-155, *An Act to amend the Criminal Records Act*, first reading August 25, 1988, the Solicitor General of Canada.

3. OUR CRIMINAL LAW (1976). 42 pp.

Publication of a policy paper by the Government of Canada, *The Criminal Law in Canadian Society* (August 1982).

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19 (repeal of *Code* ss. 465(2) [conspiracy] and 289 [venereal diseases]).

Report of the Special Committee on Pornography and Prostitution (Paul Fraser, Chairman), *Pornography and Prostitution in Canada* (1985).

4. EXPROPRIATION (1976). 38 pp.

An Act to amend the National Energy Board Act, S.C. 1980-81-82-83, c. 80.

5. MENTAL DISORDER IN THE CRIMINAL PROCESS (1976). 53 pp.

Proposed Amendments to the *Criminal Code* (mental disorder), the Minister of Justice, June 23, 1986.

6. FAMILY LAW (1976). 73 pp.

Publication by the Department of Justice of a booklet entitled *Divorce Law in Canada: Proposals for Change* (1984).

Divorce Act, 1985, S.C. 1986, c. 4.

An Act to amend the Divorce Act, S.C. 1986, c. 3.

7. SUNDAY OBSERVANCE (1976). 63 pp.

R. v. *Big M Drug Mart*, [1985] 1 S.C.R. 295.

8. THE EXIGIBILITY TO ATTACHMENT OF REMUNERATION PAYABLE BY THE CROWN IN RIGHT OF CANADA (1977). 5 pp.

Garnishment, Attachment and Pension Diversion Act, S.C. 1980-81-82-83, c. 100, s. 5.

9. Criminal Procedure: Part I: Miscellaneous Amendments (1978). 27 pp.

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19 (*Code* ss. 536, 555(2) and (3), 556, 561, 565, 625.1 and 645(5)).

10. Sexual Offences (1978). 56 pp.

An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125.

An Act to amend the Criminal Code and the Canada Evidence Act, S.C. 1987, c. 24.

An Act to amend the Criminal Code (victims of crime), S.C. 1988, c. 30.

11. The Cheque: Some Modernization (1979). 42 pp.

Bill C-19, *An Act to amend the Criminal Code ...*, first reading February 7, 1984, the Minister of Justice.

12. Theft and Fraud (1979). 60 pp.

Bill C-19, *An Act to amend the Criminal Code ...*, first reading February 7, 1984, the Minister of Justice.

13. Advisory and Investigatory Commissions (1980). 48 pp.

Under consideration by the Department of Justice.

14. Judicial Review and the Federal Court (1980). 57 pp.

An Act to amend the Federal Court Act ..., S.C. 1990, c. 8.

15. Criteria for the Determination of Death (1981). 35 pp.

Under consideration by the Department of Justice.

16. The Jury (1982). 86 pp.

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19 (*Code* ss. 626(1), 631(1)).

17. Contempt of Court (1982). 67 pp.

Bill C-19, *An Act to amend the Criminal Code ...*, first reading February 7, 1984, the Minister of Justice.

18. Obtaining Reasons before Applying for Judicial Scrutiny: Immigration Appeal Board (1982). 21 pp.

Under consideration by the Department of Justice.

19. Writs of Assistance and Telewarrants (1983). 110 pp.

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19.

20. Euthanasia, Aiding Suicide and Cessation of Treatment (1983). 35 pp.

Under consideration by the Department of Justice.

21. Investigative Tests: Alcohol, Drugs and Driving Offences (1983). 33 pp.

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19.

22. Disclosure by the Prosecution (1984). 36 pp.

Under consideration by the Department of Justice.

23. Questioning Suspects (1984). 25 pp.

Publication entitled *Report to the Attorney General by the Police Commission on the Use of Video Equipment by Police Forces in British Columbia* (1986).

24. Search and Seizure (1984). 78 pp.

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19.

An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, S.C. 1988, c. 51.

25. Obtaining Forensic Evidence: Investigative Procedures in Respect of the Person (1985). 45 pp.

Under consideration by the Department of Justice.

26. Independent Administrative Agencies: A Framework for Decision Making (1985). 101 pp.

Under consideration by the Department of Justice.

27. Disposition of Seized Property (1986). 76 pp.

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19.

An Act to amend the Criminal Code (victims of crime), S.C. 1988, c. 30.

An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, S.C. 1988, c. 51.

28. Some Aspects of Medical Treatment and Criminal Law (1986). 19 pp.

Under consideration by the Department of Justice.

29. Arrest (1986). 65 pp.

Under consideration by the Department of Justice.

30. Recodifying Criminal Law: Volume 1 (1986). 117 pp.

An Act to amend the Criminal Code (torture), S.C. 1987, c. 13 (Draft Code s. 35).

31. Recodifying Criminal Law: Revised and Enlarged Edition of Report 30 (1987). 213 pp.

Canadian Laws Offshore Application Act, S.C. 1990, c. 44 (Draft Code s. 5).

32. Our Criminal Procedure (1988). 56 pp.

Under consideration by the Department of Justice.

33. Recodifying Criminal Procedure. Volume One: Police Powers. Title 1: Search and Related Matters (1991). 332 pp.

Under consideration by the Department of Justice.

APPENDIX C
WORKING PAPERS

Although the recommendations contained in Working Papers are not final, from time to time they do have an impact on legislation. Some current examples include, the *Canadian Environmental Protection Act*, S.C. 1988, c. 22 (Working Paper 44, *Crimes against the Environment* (1985)), *An Act to amend the Criminal Code (arson)*, S.C. 1990, c. 15 (Working Paper 36, *Damage to Property: Arson* (1984)), the *British Columbia Courts Amendment Act*, S.C. 1990, c. 16, ss. 2-7 and the *Ontario Courts Amendment Act*, S.C. 1990, c. 17, ss. 7-15 (Working Paper 59, *Toward A Unified Criminal Court* (1989)), and *An Act to Amend the Criminal Code (joinder of counts)*, S.C. 1991, c. 4 (Working Paper 55, *The Charge Document in Criminal Cases* (1987)).

1. THE FAMILY COURT (1974). 55 pp.
2. THE MEANING OF GUILT: STRICT LIABILITY (1974). 38 pp.
3. THE PRINCIPLES OF SENTENCING AND DISPOSITIONS (1974). 35 pp.
4. DISCOVERY (1974). 44 pp.
5. RESTITUTION AND COMPENSATION (1974). 25 pp. (Bound with Working Paper 6.)
6. FINES (1974). 30 pp. (Bound with Working Paper 5.)
7. DIVERSION (1975). 25 pp.
8. FAMILY PROPERTY (1975). 45 pp.
9. EXPROPRIATION (1975). 106 pp.
10. LIMITS OF CRIMINAL LAW: OBSCENITY: A TEST CASE (1975). 49 pp.
11. IMPRISONMENT AND RELEASE (1975). 46 pp.
12. MAINTENANCE ON DIVORCE (1975). 40 pp.
13. DIVORCE (1975). 70 pp.
14. THE CRIMINAL PROCESS AND MENTAL DISORDER (1975). 61 pp.
15. CRIMINAL PROCEDURE: CONTROL OF THE PROCESS (1975). 60 pp.
16. CRIMINAL RESPONSIBILITY FOR GROUP ACTION (1976). 68 pp.
17. COMMISSIONS OF INQUIRY: A NEW ACT (1977). 91 pp.
18. FEDERAL COURT: JUDICIAL REVIEW (1977). 54 pp.
19. THEFT AND FRAUD: OFFENCES (1977). 123 pp.
20. CONTEMPT OF COURT: OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE (1977). 69 pp.
21. PAYMENT BY CREDIT TRANSFER (1978). 126 pp.
22. SEXUAL OFFENCES (1978). 66 pp.
23. CRITERIA FOR THE DETERMINATION OF DEATH (1979). 77 pp.
24. STERILIZATION: IMPLICATIONS FOR MENTALLY RETARDED AND MENTALLY ILL PERSONS (1979). 157 pp.
25. INDEPENDENT ADMINISTRATIVE AGENCIES (1980). 212 pp.
26. MEDICAL TREATMENT AND CRIMINAL LAW (1980). 136 pp.
27. THE JURY IN CRIMINAL TRIALS (1980). 164 pp.

28. Euthanasia, Aiding Suicide and Cessation of Treatment (1982). 79 pp.

29. The General Part: Liability and Defences (1982). 204 pp.

30. Police Powers: Search and Seizure in Criminal Law Enforcement (1983). 356 pp.

31. Damage to Property: Vandalism (1984). 65 pp.

32. Questioning Suspects (1984). 104 pp.

33. Homicide (1984). 117 pp.

34. Investigative Tests (1984). 166 pp.

35. Defamatory Libel (1984). 99 pp.

36. Damage to Property: Arson (1984). 44 pp.

37. Extraterritorial Jurisdiction (1984). 210 pp.

38. Assault (1984). 59 pp.

39. Post-Seizure Procedures (1985). 77 pp.

40. The Legal Status of the Federal Administration (1985). 106 pp.

41. Arrest (1985). 143 pp.

42. Bigamy (1985). 32 pp.

43. Behaviour Alteration and the Criminal Law (1985). 48 pp.

44. Crimes against the Environment (1985). 75 pp.

45. Secondary Liability: Participation in Crime and Inchoate Offences (1985). 53 pp.

46. Omissions, Negligence and Endangering (1985). 42 pp.

47. Electronic Surveillance (1986). 109 pp.

48. Criminal Intrusion (1986). 25 pp.

49. Crimes against the State (1986). 72 pp.

50. Hate Propaganda (1986). 57 pp.

51. Policy Implementation, Compliance and Administrative Law (1986). 105 pp.

52. Private Prosecutions (1986). 51 pp.

53. Workplace Pollution (1986). 94 pp.

54. Classification of Offences (1986). 92 pp.

55. The Charge Document in Criminal Cases (1987). 57 pp.

56. Public and Media Access to the Criminal Process (1987). 106 pp.

57. Compelling Appearance, Interim Release and Pre-trial Detention (1988). 138 pp.

58. Crimes against the Foetus (1989). 106 pp.

59. Toward a Unified Criminal Court (1989). 72 pp.

60. Plea Discussions and Agreements (1989). 97 pp.

61. Biomedical Experimentation Involving Human Subjects (1989). 69 pp.

62. Controlling Criminal Prosecutions: The Attorney General and the Crown Prosecutor (1990). 126 pp.

63. Double Jeopardy, Pleas and Verdicts (1991). 95 pp.

APPENDIX D
OTHER PAPERS PREPARED FOR THE LAW REFORM COMMISSION

I. PUBLISHED STUDIES, STUDY PAPERS, BACKGROUND PAPERS AND CONFERENCE PAPERS PREPARED FOR THE LAW REFORM COMMISSION

Administrative Law

ANISMAN, Philip. *A Catalogue of Discretionary Powers in the Revised Statutes of Canada 1970* (1975). 1025 pp.

The Immigration Appeal Board (1976). 88 pp.

CARRIÈRE, Pierre, and Sam SILVERSTONE. *The Parole Process: A Study of the National Parole Board* (1977). 157 pp.

DOERN, G. Bruce. *The Atomic Energy Control Board: An Evaluation of Regulatory and Administrative Processes and Procedures* (1977). 85 pp.

LUCAS, Alastair R., and Trevor BELL. *The National Energy Board: Policy, Procedure and Practice* (1977). 216 pp.

MULLAN, David J. *The Federal Court Act: Administrative Law Jurisdiction* (1977). 117 pp.

ISSALYS, Pierre, and Gaylord WATKINS. *Unemployment Insurance Benefits: A Study of Administrative Procedure in the Unemployment Insurance Commission* (1978). 342 pp.

Seminar for Members of Federal Administrative Tribunals, April 5-7, 1978. *Speakers' Remarks* (1978). 253 pp.

FOX, David. *Public Participation in the Administrative Process* (1979). 174 pp.

FRANSON, Robert T. *Access to Information: Independent Administrative Agencies* (1979). 80 pp.

ISSALYS, Pierre. *The Pension Appeals Board: A Study of Administrative Procedure in Social Security Matters* (1979). 360 pp.

JANISCH, H.N., A.J. PIRIE, and W. CHARLAND. *The Regulatory Process of the Canadian Transport Commission* (1979). 151 pp.

Seminar for Members of Federal Administrative Tribunals, March 19-22, 1979. *Selected Proceedings*. Edited by C.C. Johnston (1979). 90 pp.

SLAYTON, Philip. *The Anti-dumping Tribunal* (1979). 111 pp.

VANDERVORT, Lucinda. *Political Control of Independent Administrative Agencies* (1979). 190 pp.

KELLEHER, Stephen. *Canada Labour Relations Board* (1980). 106 pp.

LEADBEATER, Alan. *Council on Administration* (1980). 88 pp.

Seminar for Members of Federal Administrative Tribunals, March 1-12, 1980, at Touraine, Quebec. *Speakers' Remarks and Excerpts from Discussion Periods*. Edited by C.C. Johnston (1980). 156 pp.

EDDY, Howard R. *Sanctions, Compliance Policy and Administrative Law* (1981). 141 pp.

JOHNSTON, Christopher C. *The Canadian Radio-television and Telecommunications Commission* (1981). 144 pp.

SLAYTON, Philip, and John J. QUINN. *The Tariff Board* (1981). 154 pp.

SLATTER, Frans F. *Parliament and Administrative Agencies* (1982). 154 pp.

FRECKER, John, Patrick ROBARDET, John CLIFFORD, Daniel MOCKLE, and Kernaghan WEBB. *Towards a Modern Federal Administrative Law* (1987). 27 pp.

MOCKLE, Daniel. *Immunity from Execution* (1987). 103 pp.

CLIFFORD, John. *Inspection: A Case Study and Selected References* (1988). 108 pp.

WEBB, Kernaghan. *Pollution Control in Canada: The Regulatory Approach in the 1980s* (1988). 91 pp.

ISON, Terence G. *The Administrative Appeals Tribunal of Australia* (1989). 76 pp.

Criminal Law and Procedure

Obscenity (1972). 81 pp.

Fitness to Stand Trial (1973). 57 pp.

A Proposal for Costs in Criminal Cases (1973). 20 pp.

Discovery in Criminal Cases (1974). 261 pp.

Discovery in Criminal Cases: Report on the Questionnaire Survey (1974). 116 pp.

SCHMEISER, Douglas A. *The Native Offender and the Law* (1974). 90 pp.

Studies in Strict Liability (1974). 251 pp.

Studies on Sentencing (1974). 205 pp.

Studies on Diversion (1975). 255 pp.

BECKER, Calvin. *The Victim and the Criminal Process* (1976). 338 pp.

Community Participation in Sentencing (1976). 249 pp.

Fear of Punishment: Deterrence (1976). 149 pp.

HARRISON, Irene. *Public and Press Response to Sentencing Working Papers* (1976). 135 pp.

MacNAUGHTON-SMITH, Peter. *Permission to Be Slightly Free* (1976). 307 pp.

Studies on Imprisonment (1976). 327 pp.

Towards a Codification of Canadian Criminal Law (1976). 56 pp.

Preparing for Trial: Report of Conference Held in Ottawa, March 23-24, 1977 (1977). 342 pp.

KENNEDY, Carole. *Evaluation of the Comments Received on Working Paper 22, "Sexual Offences"* (1978). 46 pp.

The Jury (1979). 473 pp.

STENNING, Philip C., and Clifford D. SHEARING. *Search and Seizure: Powers of Private Security Personnel* (1979). 204 pp.

GRANT, Alan. *The Police: A Policy Paper* (1980). 97 pp.

PAIKIN, Lee. *The Issuance of Search Warrants* (1980). 119 pp.

STENNING, Philip C. *Legal Status of the Police* (1981). 169 pp.

BROOKS, Neil. *Police Guidelines: Pretrial Eyewitness Identification Procedures* (1983). 260 pp.

SMITH, Maurice H. *Origins of Writ of Assistance Search in England, and Its Historical Background in Canada* (1984). 99 pp.

BROOKS, Neil, and Judy FUDGE. *Search and Seizure under the Income Tax Act: Summary of a Study Paper* (1985). 23 pp.

MILLER, Joyce. *The Audio-Visual Taping of Police Interviews with Suspects and Accused Persons by Halton Regional Police Force: An Evaluation* (1988). 23 pp.

Evidence

Evidence: 1. Competence and Compellability. 2. Manner of Questioning Witnesses. 3. Credibility. 4. Character (1972). 60 pp.

Evidence: 5. Compellability of the Accused and the Admissibility of His Statements (1973). 42 pp.

Evidence: 6. Judicial Notice. 7. Opinion and Expert Evidence. 8. Burdens of Proof and Presumptions (1973). 67 pp.

Evidence: 9. Hearsay (1974). 20 pp.

Evidence: 10. The Exclusion of Illegally Obtained Evidence (1974). 36 pp.

Evidence: 11. Corroboration (1975). 19 pp.

Evidence: 12. Professional Privileges before the Courts (1975). 26 pp.

Family Law

LONDON, Jack R. *Tax and the Family* (1975). 349 pp.

PAYNE, Julien. *A Conceptual Analysis of Unified Family Courts* (1975). 684 pp.

Studies on Divorce (1975). 313 pp.

Studies on Family Property Law (1975). 401 pp.

KENNEDY, Carole. *Evaluation of Comments Received in the Area of Family Law* (1976). 88 pp.

RYAN, Edward F. *Enforcement of Maintenance Obligations* (1976). 47 pp.

BOWMAN, C. Myrna. *Practical Tools to Improve Interprovincial Enforcement of Maintenance Orders after Divorce* (1980). 50 pp.

Protection of Life

Phase I — Medico-legal Issues

KEYSERLINGK, Edward W. *Sanctity of Life or Quality of Life* (1979). 224 pp.

SOMERVILLE, Margaret A. *Consent to Medical Care* (1980). 186 pp.

BAUDOUIN, J.L., M. OUELLETTE, and P.A. MOLINARI. *Toward a Canadian Advisory Council on Biomedical Ethics* (1990). 57 pp.

KNOPPERS, Bartha M. *Human Dignity and Genetic Heritage* (1991). 93 pp

Phase II — Environmental Issues

SCHRECKER, Theodore F. *Political Economy of Environmental Hazards* (1984). 112 pp.

SWAIGEN, John, and Gail BUNT. *Sentencing in Environmental Cases* (1985). 81 pp.

CASTRILLI, J.F., and Toby VIGOD. *Pesticides in Canada: An Examination of Federal Law and Policy* (1987). 131 pp.

Miscellaneous

First Research Programme of the Law *Reform Commission of Canada* (1972). 21 pp.

EDDY, Howard R. *The Canadian Payment System and the Computer: Issues for Law Reform* (1974). 80 pp.

LAJOIE, Marie, Wallace SCHWAB, and Michel SPARER. *Drafting Laws in French* (1981). 296 pp.

II. UNPUBLISHED PAPERS PREPARED FOR THE LAW REFORM COMMISSION

The following papers supplement the list of over 300 unpublished papers which appear in previous annual reports. Unpublished papers are available for consultation in the Commission's library and can be purchased on microfiche from private companies. Please contact the Commission for additional information.

"Brief of the Law Reform Commission of Canada to the Royal Commission on New Reproductive Technologies" presented by Dr. Gilles Létourneau, President (1990). 20 pp.

CANADIAN INSTITUTE OF RESOURCES LAW. "Intergovernmental Agreements in the Canadian Regulatory Process" (1990). 135 pp.

CLIFFORD, John. "Administrative Policing: Its Nature and Authorization" (1989). 141 pp.

CLIFFORD, John. "Administrative Policing: Some Unifying Ideas" (1990). 125 pp.

COHEN, David. "Accident Compensation and the State" (1988). 180 pp.

FITZGERALD, Michael. "The Question of Moral Principles" (1990). 31 p.

HEALY, Patrick. "The Presumption of Innocence in the Draft Code of Substantive Criminal Law" (1986). 23 pp.

LAWLER, Lilja. "Police Informer Privilege" (1984). 46 pp.

ROBARDET, Patrick. "La jurisprudence récente en matière de justice naturelle et d'équité procédurale: un problème nouveau: la célérité administrative" (1989). 27 pp.

APPENDIX E
ARTICLES PUBLISHED INDEPENDENTLY WITH LAW REFORM COMMISSION INVOLVEMENT

The following is a selection of publications with which the Commission or its research personnel have been involved this year.

COUGHLAN, Stephen G. "*R.* v. *Askov* — A Bold Step Not Boldly Taken" (1991) 33 Criminal Law Quarterly 247.

COUGHLAN, Stephen G. "When Silence Isn't Golden: Waiver and the Right to Counsel" (1990) 33 Criminal Law Quarterly 43.

FITZGERALD, Patrick. "Codes and Codifications: Interpretation, Structure, and Arrangement of Codes" (1990) 2 Criminal Law Forum 127.

LÉTOURNEAU, Gilles. "La nécessité de réformer législativement les pouvoirs de police et la procédure pénale" (1991) 32 Cahiers de droit 87.

LINDEN, Allen M. "Criminal Code Reform, Washington, D.C., United States, January 21-25, 1990" (1990) 2 Criminal Law Forum 111.

RIVET, Michèle. "Sterilization and Medical Treatment of the Mentally Disabled: Some Legal and Ethical Reflections" (1990) 9 Medicine and Law 1150.

ROBARDET, Patrick. "Apparences, bonne foi et consultations internes entre décideurs en droit administratif: *Consolidated-Bathurst Packaging Ltd.* c. *Syndicat international des travailleurs du bois d'Amérique, section 2-69 et La Commission de relations de travail de l'Ontario*" (1990) 35 McGill Law Journal 957.

WEBB, Kernaghan. "Environmental Law: The Limited Role for Criminal Offenses in Environmental Protection" (1990) 2:3 Water Environment and Technology 68.

WEBB, Kernaghan. "Jutta Brunnée, Acid Rain and Ozone Layer Depletion: International Law and Regulation [Book Review]" (1990) 13 Dalhousie Law Journal 474.

WEBB, Kernaghan. "On the Periphery: The Limited Role for Criminal Offences in Environmental Protection" in D. TINGLEY, ed., *Into the Future: Environmental Law and Policy for the 1990's* (Edmonton: Environmental Law Centre, 1990). pp. 58-69.

The following articles published in a special issue of the *University of Toronto Law Journal* (volume 40, number 3, 1990) comprise the papers commissioned for a symposium on administrative law entitled *Law and Leviathan* convened by the Commission in co-operation with the Faculty of Law, University of Toronto.

BISHOP, William. "The Rational Strength of the Private Law Model" at 663.

CAIRNS, Alan C. "The Past and Future of the Canadian Administrative State" at 319.

CHANDLER, M.A. "Interest Group Representation in the Canadian Administrative State" at 369.

COHEN, David. "Suing the State" at 630.

EISENSTAT WEINRIB, Lorraine. "Why the Dean?" at 484.

EVANS, John M. "Problems in Mass Adjudication: The Courts' Contribution" at 606.

FRECKER, John. "Law and Leviathan: Introduction" at 305.

FRUG, Jerry. "Administrative Democracy" at 559.

HOWSE, Robert, PRICHARD, J. Robert S. and TREBILCOCK, Michael J. "Smaller or Smarter Government?" at 498.

HUTCHINSON, Allan C. "Mice Under a Chair: Democracy, Courts, and the Administrative State" at 374.

ISSALYS, Pierre. "Le droit administratif et la décision collective" at 611.

MacDONALD, Roderick A. "Office Politics" at 419.

MacLAUCHLAN, H. Wade. "Reimagining the State" at 405.

McCRUDDEN, Christopher. "Regulations and Thatcherism: Some British Observations on Instrument Choice and Administrative Law" at 542.

MULLAN, David J. "The Administrative State: Theory or Pragmatism?" at 362.

OWEN, Stephen. "The Expanding Role of the Ombudsman in the Administrative State" at 670.

ROBARDET, Patrick. "Vers une réinsertion du politique dans l'administration" at 587.

SCHWARTZ, Bryan. "The Inalienable Right to be Alienated" at 477.

SMITH, Gene Anne. "Public Duty and Private Power in Administrative Law" at 412.

TUOHY, Carolyn. "Bureaucracy and Democracy" at 598.

VAILLANT, Jeanne D'Arc. "Problèmes que posent les décisions collectives" at 620.

WHYTE, John D. "Normative Order and Legalism" at 491.

APPENDIX F
SOME ARTICLES ABOUT THE LAW REFORM COMMISSION AND ITS WORK

The following is a list of articles published about the Commission and its work this year. Additional material is listed in previous annual reports.

BEAUREGARD, Stéphanie. "Commission de réforme du droit du Canada, Les discussions et ententes sur le plaidoyer [notice]" (1990) 21 Revue générale de droit 387.

BERGKAMP, Lucas. "Biomedical Experimentation Involving Human Subjects [review]" (1990) 41:3 International Digest of Health Legislation 563.

"Biomedical Ethics Body Proposed" Canadian Health Facilities Law Guide, February 26, 1991. p. 1.

BYK, C. "L'expérimentation biomédicale sur l'être humain: commentaire du rapport de la Commission de réforme du droit du Canada" (1990) 1:3 International Journal of Bioethics 166.

"Canada. Commission de réforme du droit. Pour un conseil consultatif canadien d'éthique biomédicale [review]" Lettre d'information du comité consultatif national d'éthique pour les sciences de la vie et de la santé, n° 21/22, nov./déc. 1990.

COHEN, Stanley A. "Letter to Editor: [Unified Criminal Court]" (1990) 33 Criminal Law Quarterly 127.

EMSON, Harry E. "Medicine, Research and the Criminal Code" (1990) 143:2 Canadian Medical Association Journal 95.

KAISER, H. Archibald. "Preventing Which Crime? A (Relative) Outsider's Perspective on the Orthodoxy of Criminality in the Canadian Reform Agenda" (1990) 33 Criminal Law Quarterly 61.

MEWETT, Alan W. "Editorial: A Unified Criminal Court" (1990) 32 Criminal Law Quarterly 401.

ROWE, Stan. "Crimes against the Ecosphere" in *Home Place: Essays on Ecology* (Edmonton: NuWest, 1990) 111.

TUCK-JACKSON, Andrea. "The Defence of Due Diligence and the Presumption of Innocence" (1990) 33 Criminal Law Quarterly 61.

WEBBER, William A. "Biomedical Experimentation Involving Human Subjects [Review]" (1990) 69 Canadian Bar Review 619.

APPENDIX G
LAW REFORM COMMISSION PUBLICATIONS REFERRED TO BY THE COURTS

EVIDENCE: 1. COMPETENCE AND COMPELLABILITY (1972)

R. v. *Duvivier* (1990), 60 C.C.C. (3d) 352 (Ont. Ct Gen. Div.).

EVIDENCE: 3. CREDIBILITY (1972)

Corbett v. *The Queen*, [1988] 1 S.C.R. 670; [1988] 4 W.W.R. 481; 28 B.C.L.R. (2d) 145; 41 C.C.C. (3d) 385.

EVIDENCE: 4. CHARACTER (1972)

R. v. *Corbett* (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).

R. v. *Konkin*, [1983] 1 S.C.R. 388; 3 C.C.C. (3d) 289.

R. v. *LeGallant* (1986), 33 D.L.R. (4th) 444; [1986] 6 W.W.R. 372; 6 B.C.L.R. (2d) 105; 29 C.C.C. (3d) 291; 54 C.R. (3d) 46 (C.A.).

R. v. *Tran* (1988), 46 C.C.C. (3d) 40 (Man. C.A.).

EVIDENCE: 5. COMPELLABILITY OF THE ACCUSED AND THE ADMISSIBILITY OF HIS STATEMENTS (1973)

R. v. *Corbett* (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).

EVIDENCE: 7. OPINION AND EXPERT EVIDENCE (1973)

Haida Inn Partnership v. *Touche Ross and Co.* (1989), 34 B.C.L.R. (2d) 80 (S.C.).

EVIDENCE: 8. BURDENS OF PROOF AND PRESUMPTIONS (1973)

R. v. *Carroll* (1983), 40 Nfld & P.E.I.R. and 115 A.P.R. 147; 4 C.C.C. (3d) 131 (P.E.I.C.A.).

R. v. *Keegstra*, [1988] 5 W.W.R. 211; 87 A.R. 177; 43 C.C.C. (3d) 150; 65 C.R. (3d) 289; 39 C.R.R. 5 (C.A.).

THE FAMILY COURT (Working Paper 1, 1974)

Re Dadswell (1977), 27 R.F.L. 214 (Ont. Prov. Ct).

Re MacBride and MacBride (1986), 58 O.R. (2d) 230; 35 D.L.R. (4th) 115 (Unif. Fam. Ct).

Reid v. *Reid* (1977), 11 O.R. (2d) 622; 67 D.L.R. (3d) 46; 25 R.F.L. 209 (Div. Ct).

THE MEANING OF GUILT: STRICT LIABILITY (Working Paper 2, 1974)

Hilton Canada v. *Gaboury (juge)*, [1977] C.A. 108.

R. v. *MacDougall* (1981), 46 N.S.R. (2d) and 89 A.P.R. 47; 60 C.C.C. (2d) 137 (C.A.).

R. v. *Sault Ste. Marie*, [1978] 2 S.C.R. 1299; 21 N.R. 295; 3 C.R. (3d) 30.

THE PRINCIPLES OF SENTENCING AND DISPOSITIONS (Working Paper 3, 1974)

R. v. *Groves* (1977), 17 O.R. (2d) 65; 79 D.L.R. (3d) 561; 37 C.C.C. (2d) 429; 39 C.R.N.S. 366 (H.C.).

R. v. *Irwin* (1979), 16 A.R. 566; 48 C.C.C. (2d) 423; 10 C.R. (3d) S-33 (C.A.).

R. v. *Jones* (1975), 25 C.C.C. (2d) 256 (Ont. Div. Ct).

R. v. *L.(D.)* (1990), 53 C.C.C. (3d) 365; 75 C.R. (3d) 16 (B.C. C.A.).

R. v. *McGinn* (1989), 75 Sask. R. 161; 49 C.C.C. (3d) 137 (C.A.).

R. v. *Wood*, [1976] 2 W.W.R. 135; 26 C.C.C. (2d) 100 (Alta C.A.).

R. v. *Zelensky*, [1977] 1 W.W.R. 155 (Man. C.A.).

Turcotte v. *Gagnon*, [1974] R.P. Qué. 309.

DISCOVERY (Working Paper 4, 1974)

Kristman v. *The Queen* (1984), 12 D.L.R. (4th) 283; 13 C.C.C. (3d) 522 (Alta Q.B.).

Magna v. *The Queen*, [1977] C.S. 138; 40 C.R.N.S. 1.

R. v. *Barnes* (1979), 74 A.P.R. 277; 49 C.C.C. (2d) 334; 12 C.R. (3d) 180 (Nfld Dist. Ct).

R. v. *Brass* (1981), 15 Sask. R. 214; 64 C.C.C. (2d) 206 (Q.B.).

R. v. *Scott* (1984), 16 C.C.C. (3d) 511 (Sask. C.A.).

RESTITUTION AND COMPENSATION (Working Paper 5, 1974)

R. v. *Fitzgibbon*, [1990] 1 S.C.R. 1005; 55 C.C.C. (3d) 449; 76 C.R. (3d) 378.

R. v. *Groves* (1977), 17 O.R. (2d) 65; 79 D.L.R. (3d) 561; 37 C.C.C. (2d) 429; 39 C.R.N.S. 366 (H.C.).

R. v. *Zelensky*, [1978] 2 S.C.R. 940; 21 N.R. 372; [1978] 3 W.W.R. 693; 2 C.R. (3d) 107.

FINES (Working Paper 6, 1974)

R. v. *Hebb* (1989), 89 N.S.R. (2d) and 227 A.P.R. 137; 47 C.C.C. (3d) 193; 69 C.R. (3d) 1; 41 C.R.R. 241 (S.C.T.D.).

DISCOVERY IN CRIMINAL CASES (1974)

Skogman v. *The Queen*, [1984] 2 S.C.R. 93; 11 D.L.R. (4th) 161; [1984] 5 W.W.R. 52; 13 C.C.C. (3d) 161; 41 C.R. (3d) 1.

EVIDENCE: 10. THE EXCLUSION OF ILLEGALLY OBTAINED EVIDENCE (1974)

R. v. *A.N.* (1977), 77 D.L.R. (3d) 252 (B.C. Prov. Ct, Fam. Div.).

R. v. *Stevens* (1983), 58 N.S.R. (2d) and 123 A.P.R. 413; 7 C.C.C. (3d) 260 (C.A.).

STUDIES ON SENTENCING (1974)

R. v. *McGinn* (1989), 75 Sask. R. 161; 49 C.C.C. (3d) 137 (C.A.).

STUDIES ON STRICT LIABILITY (1974)

R. v. *Gonder* (1981), 62 C.C.C. (2d) 326 (Yukon Terr. Ct).

IN SIGHT OF LAND ... (Fourth Annual Report, 1974-1975)

R. v. *Earle* (1975), 8 A.P.R. 488 (Nfld Dist. Ct).

R. v. *Wood*, [1976] 2 W.W.R. 135; 26 C.C.C. (2d) 100 (Alta C.A.).

EVIDENCE (Report 1, 1975)

Catholic Children's Aid Society of Metropolitan Toronto v. *S.(J.)* (1987), 62 O.R. (2d) 702 (Prov. Ct, Fam. Div.).

Graat v. *The Queen*, [1982] 2 S.C.R. 819; 144 D.L.R. (3d) 267; 45 N.R. 451; 2 C.C.C. (3d) 365; 31 C.R. (3d) 289.

Posluns v. *Rank City Wall Canada* (1983), 39 O.R. (2d) 134 (Co. Ct).

R. v. *Alarie* (1982), 28 C.R. (3d) 73 (Que. Ct Sess. P.).

R. v. *Auclair*, [1987] R.J.Q. 142 (S.C.).

R. v. *B.(G.)*, [1990] 2 S.C.R. 3; [1990] 4 W.W.R. 576; 56 C.C.C. (3d) 161; 77 C.R. (3d) 327.

R. v. *Cassibo* (1983), 39 O.R. (2d) 288; 70 C.C.C. (2d) 498 (C.A.).

R. v. *Corbett* (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).

R. v. *Cronshaw and Dupon* (1977), 33 C.C.C. (2d) 183 (Ont. Prov. Ct).

R. v. *Czipps* (1979), 25 O.R. (2d) 527; 101 D.L.R. (3d) 323; 48 C.C.C. (2d) 166 (C.A.).

R. v. *MacPherson* (1980), 36 N.S.R. (2d) and 64 A.P.R. 674; 52 C.C.C. (2d) 547 (C.A.).

R. v. *Perron*, [1983] C.S.P. 1103.

R. v. *Salituro* (1990), 38 O.A.C. 241; 56 C.C.C. (3d) 350; 78 C.R. (3d) 68.

R. v. *Samson (No. 7)* (1982), 37 O.R. (2d) 237; 29 C.R. (3d) 215 (Co. Ct).

R. v. *Stevens* (1983), 58 N.S.R. (2d) and 123 A.P.R. 413; 7 C.C.C. (3d) 260 (C.A.).

R. v. *Stewart* (1981), 33 O.R. (2d) 1; 125 D.L.R. (3d) 576; 60 C.C.C. (2d) 407 (C.A.).

R. v. *Stratton* (1978), 21 O.R. (2d) 258; 90 D.L.R. (3d) 420; 42 C.C.C. (2d) 449 (C.A.).

R. v. *Sweryda* (1987), 34 C.C.C. (3d) 325 (Alta C.A.).

Vetrovec v. *The Queen*, [1982] 1 S.C.R. 811; 136 D.L.R. (3d) 89; 41 N.R. 606; [1983] 1 W.W.R. 193; 67 C.C.C. (2d) 1; 27 C.R. (3d) 404.

DIVERSION (Working Paper 7, 1975)

R. v. *Jones* (1975), 25 C.C.C. (2d) 256 (Ont. Div. Ct).

LIMITS OF CRIMINAL LAW: OBSCENITY: A TEST CASE (Working Paper 10, 1975)

Germain v. *The Queen*, [1985] 2 S.C.R. 241; 21 D.L.R. (4th) 296; 62 N.R. 87; 21 C.C.C. (3d) 289.

R. v. *Southland Corp.*, [1978] 6 W.W.R. 166 (Man. Prov. Ct).

IMPRISONMENT AND RELEASE (Working Paper 11, 1975)

R. v. *Bowen and Kay*, [1989] 2 W.W.R. 213; 91 A.R. 264 (Q.B.).

R. v. *Earle* (1975), 8 A.P.R. 488 (Nfld Dist. Ct).

R. v. *Harris*, [1985] C.S.P. 1011.

R. v. *Kakegamick* (1990), 63 Man. R. (2d) 62 (C.A.).

R. v. *MacLean* (1979), 32 N.S.R. (2d) and 54 A.P.R. 650; 49 C.C.C. (2d) 552 (C.A.).

R. v. *McGinn* (1989), 75 Sask. R. 161; 49 C.C.C. (3d) 137 (C.A.).

R. v. *Mouland* (1982), 38 Nfld & P.E.I.R. and 108 A.P.R. 281 (Nfld Prov. Ct).

R. v. *Shand* (1976), 11 O.R. (2d) 28; 64 D.L.R. (3d) 626 (Co. Ct).

Reference Re Section 94(2) of Motor Vehicle Act, R.S.B.C. 1979, c. 288, [1985] 2 S.C.R. 486; 24 D.L.R. (4th) 536; 63 N.R. 266; [1986] 1 W.W.R. 481; 69 B.C.L.R. 145; 23 C.C.C. (3d) 289; 48 C.R. (3d) 289.

MAINTENANCE ON DIVORCE (Working Paper 12, 1975)

Linton v. *Linton* (1990), 1 O.R. (3d) 1; 75 D.L.R. (4th) 637; 42 O.A.C. 328.

Marcus v. *Marcus*, [1977] 4 W.W.R. 458 (B.C.C.A.).

Messier v. *Delage*, [1983] 2 S.C.R. 401; 2 D.L.R. (4th) 1.

Pelech v. *Pelech*, [1987] 1 S.C.R. 801; 38 D.L.R. (4th) 641; 76 N.R. 81; [1987] 4 W.W.R. 481; 14 B.C.L.R. (2d) 145.

Rowe v. *Rowe* (1976), 24 R.F.L. 306 (B.C.S.C.).

Webb v. *Webb* (1984), 46 O.R. (2d) 457; 10 D.L.R. (4th) 74 (C.A.).

DIVORCE (Working Paper 13, 1975)

Droit de la famille — 100, [1984] C.S. 75.

Droit de la famille — 116, [1984] C.S. 106.

Story v. *Story* (1989), 42 B.C.L.R. (2d) 21 (C.A.).

Talbot v. *Henry*, [1990] 5 W.W.R. 251; 84 Sask. R. 170 (C.A.).

Wakaluk v. *Wakaluk* (1977), 25 R.F.L. 292 (Sask. C.A.).

THE CRIMINAL PROCESS AND MENTAL DISORDER (Working Paper 14, 1975)

R. v. *Rodgers* (1990), 61 C.C.C. (3d) 481; 2 C.R. (4th) 192 (B.C.C.A.).

R. v. *Swain* (1986), 53 O.R. (2d) 609; 24 C.C.C. (3d) 385; 50 C.R. (3d) 97 (C.A.).

R. v. *Swain*, [1991] 1 S.C.R. 933.

Steele v. *R.* (1991), 63 C.C.C. (3d) 149.

CRIMINAL PROCEDURE: CONTROL OF THE PROCESS (Working Paper 15, 1975)

Hébert v. *Marx*, [1988] R.J.Q. 2185 (S.C.).

R. v. *Brass* (1981), 15 Sask. R. 214; 64 C.C.C. (2d) 206 (Q.B.).

R. v. *Lyons*, [1987] 2 S.C.R. 309; 44 D.L.R. (4th) 193; 80 N.R. 161; 82 N.S.R. (2d) and 207 A.P.R. 271; 37 C.C.C. (3d) 1; 61 C.R. (3d) 1.

Anisman, Philip. **A CATALOGUE OF DISCRETIONARY POWERS IN THE REVISED STATUTES OF CANADA 1970** (1975)

R. v. *Vandenbussche* (1979), 50 C.C.C. (2d) 15 (Ont. Dist. Ct).

EVIDENCE: 11. CORROBORATION (1975)

Vetrovec v. *The Queen*, [1982] 1 S.C.R. 811; 136 D.L.R. (3d) 89; 41 N.R. 606; [1983] 1 W.W.R. 193; 67 C.C.C. (2d) 1; 27 C.R. (3d) 404.

STUDIES ON FAMILY PROPERTY LAW (1975)

Gagnon v. *Dauphinais*, [1977] C.S. 352.

GUIDELINES: DISPOSITIONS AND SENTENCES IN THE CRIMINAL PROCESS (Report 2, 1976)

R. v. *L.(D.)* (1990), 53 C.C.C. (3d) 365; 75 C.R. (3d) 16 (B.C.C.A.).

R. v. *Vaillancourt* (1989), 43 C.R.R. 60 (Ont. C.A.).

OUR CRIMINAL LAW (Report 3, 1976)

C.E. Jamieson & Co. v. *Attorney General of Canada*, [1988] 1 F.C. 590; 46 D.L.R. (4th) 582; 37 C.C.C. (3d) 212 (T.D.).

Libman v. *The Queen*, [1985] 2 S.C.R. 178; 21 D.L.R. (4th) 174; 62 N.R. 161; 21 C.C.C. (3d) 206.

R. v. *Chiasson* (1982), 39 N.B.R. (2d) 631; 135 D.L.R. (3d) 499; 66 C.C.C. (2d) 195; 27 C.R. (3d) 361 (C.A.).

R. v. *McDougall* (1990), 1 O.R. (3d) 247; 42 O.A.C. 223; 62 C.C.C. (3d) 174.

R. v. *Sault Ste. Marie*, [1978] 2 S.C.R. 1299; 21 N.R. 295; 3 C.R. (3d) 30.

R. v. *Southland Corp.*, [1978] 6 W.W.R. 166 (Man. Prov. Ct).

Re James L. Martinson (Jan. 18, 1985) CUB 9958.

Thomson Newspapers v. *Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1

S.C.R. 425; 67 D.L.R. (4th) 161; 54 C.C.C. (3d) 417; 76 C.R. (3d) 128; 47 C.R.R. 1.

Mental Disorder in the Criminal Process (Report 5, 1976)

Institut Philippe Pinel de Montréal v. *Dion*, [1983] C.S. 438.

R. v. *Avadluk* (1979), 24 A.R. 530 (N.W.T.S.C.).

R. v. *Rabey* (1978), 17 O.R. (2d) 1; 79 D.L.R. (3d) 414; 37 C.C.C. (2d) 461; 40 C.R.N.S. 56 (C.A.).

R. v. *Simpson* (1977), 16 O.R. (2d) 129; 77 D.L.R. (3d) 507; 35 C.C.C. (2d) 337 (C.A.).

R. v. *Swain* (1986), 53 O.R. (2d) 609; 24 C.C.C. (3d) 385; 50 C.R. (3d) 97 (C.A.).

R. v. *Swain*, [1991] 1 S.C.R. 933.

Family Law (Report 6, 1976)

Harrington v. *Harrington* (1981), 33 O.R. (2d) 150; 123 D.L.R. (3d) 689; 22 R.F.L. (2d) 40 (C.A.).

Kruger v. *Kruger* (1979), 104 D.L.R. (3d) 481; 11 R.F.L. (2d) 52 (Ont. C.A.).

Linton v. *Linton* (1990), 1 O.R. (3d) 1; 75 D.L.R. (4th) 637; 42 O.A.C. 328.

Young v. *Young* (1990), 75 D.L.R. (4th) 46; 50 B.C.L.R. (2d) 1 (C.A.).

Sunday Observance (Report 7, 1976)

R. v. *Big M Drug Mart*, [1983] 4 W.W.R. 54 (Alta Prov. Ct).

R. v. *Big M Drug Mart*, [1985] 1 S.C.R. 295; 18 D.L.R. (4th) 321; 58 N.R. 81; [1985] 3 W.W.R. 481; 60 A.R. 161; 18 C.C.C. (3d) 385.

Criminal Responsibility for Group Action (Working Paper 16, 1976)

R. v. *Cie John de Kuyper et Fils Canada*, [1980] C.S.P. 1049.

R. v. *Ellis Don Ltd.* (1990), 1 O.R. (3d) 193; 61 C.C.C. (3d) 423; 2 C.R. (4th) 118 (C.A.).

R. v. *Northwest Territories Power Corp.* (1989), 5 C.E.L.R. (n.s.) 57 (N.W.T. Terr. Ct).

R. v. *Panarctic Oils* (1983), 43 A.R. 199 (N.W.T. Terr. Ct).

Thomson Newspapers v. *Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425; 67 D.L.R. (4th) 161; 54 C.C.C. (3d) 417; 76 C.R. (3d) 128; 47 C.R.R. 1.

Fear of Punishment: Deterrence (1976)

R. v. *Dembrowski* (1984), 29 M.V.R. 219 (Man. Prov. Ct).

R. v. *Doerksen* (1990), 62 Man. R. (2d) 259; 53 C.C.C. (3d) 509 (C.A.).

R. v. *MacLeod* (1977), 32 C.C.C. (2d) 315 (N.S.S.C.).

R. v. *McLay* (1976), 19 A.P.R. 135 (N.S.C.A).

R. v. *Mouland* (1982), 38 Nfld & P.E.I.R. and 108 A.P.R. 281 (Nfld Prov. Ct).

The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada (Report 8, 1977)

Bank of Montreal v. *Pafford* (1984), 6 D.L.R. (4th) 118 (N.B. Q.B.).

Martin v. *Martin* (1981), 33 O.R. (2d) 164; 123 D.L.R. (3d) 718; 24 R.F.L. (2d) 211 (H.C.).

Commissions of Inquiry: A New Act (Working Paper 17, 1977)

Fraternité inter-provinciale des ouvriers en électricité v. *Office de la construction du Québec*, [1983] C.A. 7; 148 D.L.R. (3d) 626.

MacKeigan v. *Hickman* (1988), 43 C.C.C. (3d) 287 (N.S.S.C.).

R. v. *Kowalski* (1990), 107 A.R. 60; 57 C.C.C. (3d) 168 (P.C.).

Starr v. *Houlden*, [1990] 1 S.C.R. 1366; 68 D.L.R. (4th) 641; 55 C.C.C. (3d) 472.

Thomson Newspapers v. *Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425; 67 D.L.R. (4th) 161; 54 C.C.C. (3d) 417; 76 C.R. (3d) 128; 47 C.R.R. 1.

Federal Court: Judicial Review (Working Paper 18, 1977)

James Richardson & Sons v. *Minister of National Revenue* (1980), 117 D.L.R. (3d) 557; [1981] 2 W.W.R. 357 (Man. Q.B.).

Sabattis v. *Oromocto Indian Band* (1986), 32 D.L.R. (4th) 680 (N.B.C.A.).

Syndicat des employés de production du Québec et de l'Acadie v. *Canada (Canadian Human Rights Commission)*, [1989] 2 S.C.R. 879; 62 D.L.R. (4th) 385; 100 N.R. 241.

Theft and Fraud: Offences (Working Paper 19, 1977)

R. v. *Bank of Nova Scotia* (1985), 66 N.S.R. (2d) and 152 A.P.R. 222 (C.A.).

R. v. *Fischer* (1987), 31 C.C.C. (3d) 303 (Sask. C.A.).

R. v. *Milne*, [1991] 1 W.W.R. 385; 109 A.R. 268 (C.A.).

R. v. *Sebe* (1987), 57 Sask. R. 256; 35 C.C.C. (3d) 97; 57 C.R. (3d) 348 (C.A.).

Contempt of Court: Offences against the Administration of Justice (Working Paper 20, 1977)

Attorney General of Quebec v. *Laurendeau* (1982), 3 C.C.C. (3d) 250 (Que. S.C.).

Protection de la jeunesse — 5, [1980] T.J. 2033.

Saulnier v. *Morin*, [1985] C.S. 641.

Carrière, Pierre, and Sam Silverstone. **The Parole Process: A Study of the National Parole Board** (1977)

Bains v. *Canada (National Parole Board)* (1989), 27 F.T.R. 316.

Criminal Procedure: Part I: Miscellaneous Amendments (Report 9, 1978)

R. v. *Mastroianni* (1976), 36 C.C.C. (2d) 97 (Ont. Prov. Ct).

R. v. *Smith* (15 May 1985), York 2490-83 (Ont. Dist. Ct).

Sexual Offences (Report 10, 1978)

R. v. *Ferguson* (1987), 16 B.C.L.R. (2d) 273; [1987] 6 W.W.R. 481; 36 C.C.C. (3d) 507 (C.A.).

R. v. *LeGallant* (1985), 47 C.R. (3d) 170 (B.C.S.C.).

R. v. *Moore* (1979), 30 N.S.R. and 49 A.P.R. 638 (C.A.).

R. v. *Petrozzi* (1987), 13 B.C.L.R. (2d) 273; [1987] 5 W.W.R. 71; 35 C.C.C. (3d) 528; 58 C.R. (3d) 320 (C.A.).

R. v. *R.P.T.* (1983), 7 C.C.C. (3d) 109 (Alta C.A.).

Sexual Offences (Working Paper 22, 1978)

Protection de la jeunesse — 13, [1980] T.J. 2022.

R. v. *Bird* (1984), 40 C.R. (3d) 41 (Man. Q.B.).

R. v. *Ferguson* (1987), 16 B.C.L.R. (2d) 273; [1987] 6 W.W.R. 481; 36 C.C.C. (3d) 507 (C.A.).

R. v. *Hess*; *R.* v. *Nguyen*, [1990] 2 S.C.R. 906; 119 N.R. 353; [1990] 6 W.W.R. 290; 59 C.C.C. (3d) 161; 79 C.R. (3d) 332; 50 C.R.R. 71.

R. v. *Kroetsch* (1988), 44 C.R.R. 212 (B.C. Co. Ct).

R. v. *LeGallant* (1986), 33 D.L.R. (4th) 444; [1986] 6 W.W.R. 372; 6 B.C.L.R. (2d) 105; 29 C.C.C. (3d) 291; 54 C.R. (3d) 46 (C.A.).

R. v. *Petrozzi* (1987), 13 B.C.L.R. (2d) 273; [1987] 5 W.W.R. 71; 35 C.C.C. (3d) 528; 58 C.R. (3d) 320 (C.A.).

The Cheque: Some Modernization (Report 11, 1979)

Toronto Dominion Bank v. *Jordan* (1985), 61 B.C.L.R. 105 (C.A.).

Sterilization: Implications for Mentally Retarded and Mentally Ill Persons (Working Paper 24, 1979)

Eve v. *Mrs. E.*, [1986] 2 S.C.R. 388; 71 N.R. 1; 61 Nfld & P.E.I.R. 273.

Re Eve (1980), 27 Nfld & P.E.I.R. and 74 A.P.R. 97; 115 D.L.R. (3d) 283 (P.E.I.C.A.).

Re K. (1985), 60 B.C.L.R. 209; [1985] 3 W.W.R. 204 (S.C.).

Re K. and Public Trustee (1985), 19 D.L.R. (4th) 255 (B.C.C.A.).

Keyserlingk, Edward W. **Sanctity of Life or Quality of Life** (1979)

Re Eve (1980), 27 Nfld & P.E.I.R. and 74 A.P.R. 97; 115 D.L.R. (3d) 283 (P.E.I.C.A.).

Studies on the Jury (1979)

R. v. *Sherratt*, [1991] 1 S.C.R. 509.

Advisory and Investigatory Commissions (Report 13, 1980)

Starr v. *Houlden*, [1990] 1 S.C.R. 1366; 68 D.L.R. (4th) 641; 55 C.C.C. (3d) 472.

Judicial Review and the Federal Court (Report 14, 1980)

Pursley v. *Canada (Minister of Employment and Immigration)* (1989), 29 F.T.R. 204.

Re James L. Martinson (Jan. 18, 1985) CUB 9958.

Independent Administrative Agencies (Working Paper 25, 1980)

Attorney General of Canada v. *Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735; 115 D.L.R. (3d) 1; 33 N.R. 304.

C.W.C. v. *Canada (Attorney General)*, [1989] 1 F.C. 643; 21 F.T.R. 56.

Medical Treatment and Criminal Law (Working Paper 26, 1980)

Canada (Secretary of State) v. *Charran* (1988), 21 F.T.R. 117.

New Brunswick (Minister of Health and Social Services) v. *B.(R.)* (1990), 70 D.L.R. (4th) 568; 106 N.B.R. (2d) and 265 A.P.R. 206 (Q.B.).

Protection de la jeunesse, 261 [1987] R.J.Q. 1461 (T.J.).

R. v. *Cyrenne, Cyrenne and Cramb* (1981), 62 C.C.C. (2d) 238 (Ont. Dist. Ct).

Re K. (1985), 60 B.C.L.R. 209; [1985] 3 W.W.R. 204 (S.C.).

Singh v. *Minister of Employment and Immigration*, [1985] 1 S.C.R. 177; 17 D.L.R. (4th) 422; 58 N.R. 1.

The Jury in Criminal Trials (Working Paper 27, 1980)

Morgentaler v. *The Queen*, [1988] 1 S.C.R. 30; 44 D.L.R. (4th) 385; 82 N.R. 1; 37 C.C.C. (3d) 449; 62 C.R. (3d) 1.

R. v. *Andrade* (1985), 18 C.C.C. (3d) 41 (Ont. C.A.).

R. v. *Emile*, [1988] 5 W.W.R. 481; 42 C.C.C. (3d) 408; 65 C.R. (3d) 135 (N.W.T.C.A.).

R. v. *Fatt* (1986), 54 C.R. (3d) 281 (N.W.T.S.C.).

R. v. *Punch*, [1986] 1 W.W.R. 592; 22 C.C.C. (3d) 289; 48 C.R. (3d) 374 (N.W.T.S.C.).

R. v. *Sherratt*, [1991] 1 S.C.R. 509.

R. v. *Turpin*, [1989] 1 S.C.R. 1296; 96 N.R. 115; 69 C.R. (3d) 97; 39 C.R.R. 306.

Bowman, C. Myrna. **Practical Tools to Improve Interprovincial Enforcement of Maintenance Orders after Divorce** (1980)

Weniuk v. *Weniuk*, [1984] 2 F.C. 464; [1985] 1 W.W.R. 392 (T.D.).

Grant, Alan. **The Police: A Policy Paper** (1980)

Attorney-General of Alberta v. *Putnam*, [1981] 2 S.C.R. 267; 123 D.L.R. (3d) 257; 37 N.R. 1; [1981] 6 W.W.R. 217; 28 A.R. 387; 62 C.C.C. (2d) 51.

Leadbeater, Alan. **Council on Administration** (1980)

Tétreault-Gadoury v. *Canada (Canada Employment and Immigration Commission)*, [1989] 2 F.C. 245; 53 D.L.R. (4th) 384; 88 N.R. 6; 43 C.R.R. 320 (C.A.).

Paikin, Lee. **The Issuance of Search Warrants** (1980)

R. v. *Jackson* (1983), 9 C.C.C. (3d) 125 (B.C.C.A.).

Re Gillis and The Queen (1982), 1 C.C.C. (3d) 545 (Que. S.C.).

Somerville, Margaret A. **Consent to Medical Care** (1980)

Frerotte v. *Irwin* (1986), 51 Sask. R. 108 (Q.B.).

Re Eve (1980), 27 Nfld & P.E.I.R. and 74 A.P.R. 97; 115 D.L.R. (3d) 283 (P.E.I.C.A.).

Criteria for the Determination of Death (Report 15, 1981)

R. v. *Green* (1988), 43 C.C.C. (3d) 413 (B.C.S.C.).

Lajoie, Marie, Wallace Schwab and Michel Sparer. **Drafting Laws in French** (1981)

Droit de la famille — 380, [1987] R.J.Q. 1663 (C.A.).

G.G. v. *A.D.* (1987), 11 Q.A.C. 200.

Stenning, Philip C. **Legal Status of the Police** (1981)

Cross v. *Wood*, [1990] 6 W.W.R. 369; 68 Man. R. (2d) 117; 59 C.C.C. (3d) 560 (Q.B.).

Hayes v. *Thompson* (1985), 17 D.L.R. (4th) 751; 18 C.C.C. (3d) 254 (B.C.C.A.).

Hutton v. *Attorney-General of Ontario* (1987), 62 O.R. (2d) 676; 30 Admin. L.R. 85 (H.C.).

Office de la Construction du Québec v. *Plante*, [1985] C.S.P. 1103.

R. v. *Strachan* (1986), 25 D.L.R. (4th) 567; 24 C.C.C. (3d) 205; 49 C.R. 289 (B.C.C.A.).

The Jury (Report 16, 1982)

R. v. *Cecchini* (1986), 22 C.C.C. (3d) 323; 48 C.R. (3d) 145 (Ont. H.C.).

R. v. *Favel* (1987), 39 C.C.C. (3d) 378 (Sask. C.A.).

R. v. *Kent, Sinclair and Gode* (1986), 40 Man. R. (2d) 160; 27 C.C.C. (3d) 405 (C.A.).

R. v. *Stoddart* (1987), 37 C.C.C. (3d) 351; 59 C.R. (3d) 134 (Ont. C.A.).

R. v. *Tzimopoulos* (1986), 29 C.C.C. (3d) 304; 54 C.R. (3d) 1 (Ont. C.A.).

Contempt of Court (Report 17, 1982)

Attorney General of Quebec v. *Laurendeau* (1982), 3 C.C.C. (3d) 250 (Que. S.C.).

R. v. *Bertrand* (1989), 49 C.C.C. (3d) 397; 70 C.R. (3d) 362 (Que. S.C.).

R. v. *Kopyto* (1987), 62 O.R. (2d) 449; 47 D.L.R. (4th) 213; 39 C.C.C. (3d) 1; 61 C.R. (3d) 209 (C.A.).

Obtaining Reasons before Applying for Judicial Scrutiny: Immigration Appeal Board (Report 18, 1982)

Bau v. *Canada (Minister of Employment and Immigration)* (1987), 11 F.T.R. 186.

Euthanasia, Aiding Suicide and Cessation of Treatment (Working Paper 28, 1982)

Commission de protection des droits de la jeunesse v. *C.T. and G.R.*, [1990] R.J.Q. 1674 (C.S.).

In Re Goyette, [1983] C.S. 429.

The General Part: Liability and Defences (Working Paper 29, 1982)

Perka v. *The Queen*, [1984] 2 S.C.R. 232; 13 D.L.R. (4th) 1; [1984] 6 W.W.R. 289; 28 B.C.L.R. (2d) 205; 14 C.C.C. (3d) 385; 42 C.R. (3d) 113.

R. v. *Chaulk*, [1990] 3 S.C.R. 1303; 119 N.R. 161; [1991] 2 W.W.R. 385; 62 C.C.C. (3d) 193; 2 C.R. (4th) 1 (S.C.C.).

R. v. *Kusyj* (1983), 51 A.R. 243 (N.W.T.S.C.).

R. v. *Wasylyshyn* (1983), 48 A.R. 246; 36 C.R. (3d) 143 (N.W.T.S.C.).

Re James L. Martinson (Jan. 18, 1985) CUB 9958.

Writs of Assistance and Telewarrants (Report 19, 1983)

R. v. *Noble* (1984), 48 O.R. (2d) 643; 14 D.L.R. (4th) 216; 16 C.C.C. (3d) 146 (C.A.).

R. v. *Texaco Canada* (1984), 13 C.E.L.R. 124.

Euthanasia, Aiding Suicide and Cessation of Treatment (Report 20, 1983)

Commission de protection des droits de la jeunesse v. *C.T. and G.R.*, [1990] R.J.Q. 1674 (C.S.).

Investigative Tests: Alcohol, Drugs and Driving Offences (Report 21, 1983)

R. v. *Racette* (1988), 61 Sask. R. 248; 48 D.L.R. (4th) 412; [1988] 2 W.W.R. 318; 39 C.C.C. (3d) 289 (C.A.).

Police Powers: Search and Seizure in Criminal Law Enforcement (Working Paper 30, 1983)

Canadian Broadcasting Corp. v. *Backman* (1991), 100 N.S.R. (2d) and 272 A.P.R. 185 (T.D.).

CHUM Ltd. v. *Wicks* (1987), 65 Nfld & P.E.I.R. and 199 A.P.R. 26 (Nfld S.C.T.D.).

Kourtessis v. *M.N.R.*, [1989] 1 W.W.R. 508; 30 B.C.L.R. (2d) 342; 44 C.C.C. (3d) 79 (S.C.).

Laplante v. *R.* (1987), 48 D.L.R. (4th) 615; 59 Sask. R. 251 (C.A.).

R. v. *Belliveau* (1986), 75 N.B.R. (2d) and 188 A.P.R. 18; 30 C.C.C. (3d) 163; 54 C.R. (3d) 144 (C.A.).

R. v. *Blake* (1983), 37 C.R. (3d) 347 (Que. Ct Sess. P.).

R. v. *Hamill* (1984), 13 D.L.R. (4th) 275; [1984] 6 W.W.R. 530; 14 C.C.C. (3d) 338; 41 C.R. (3d) 123 (B.C.C.A.).

R. v. *Lerke* (1986), 25 D.L.R. (4th) 403; [1986] 3 W.W.R. 17; 67 A.R. 390; 24 C.C.C. (3d) 129; 49 C.R. (3d) 324 (C.A.).

R. v. *Rao* (1984), 46 O.R. (2d) 80; 9 D.L.R. (4th) 542; 12 C.C.C. (3d) 97; 84 C.R. (3d) 1 (C.A.).

R. v. *Texaco Canada* (1984), 13 C.E.L.R. 124.

R. v. *Williams* (1990), 73 O.R. (2d) 102 (D.C.).

Re Banque Royale du Canada and The Queen (1985), 18 C.C.C. (3d) 98; 44 C.R. (3d) 387 (Que. C.A.).

Re Danielson, [1985] 1 F.C. 821; 16 C.C.C. (3d) (T.D.).

Re T.R.W., P.B. and R.W. (1986), 68 A.R. 12 (Prov. Ct).

Royal Bank of Canada v. *Bourque* (1983), 38 C.R. (3d) 363 (Que. S.C.).

Société Radio-Canada v. *Lessard*, [1989] R.J.Q. 2043; 22 Q.A.C. 280; 50 C.C.C. (3d) 428; 72 C.R. (3d) 291.

Vella v. *The Queen* (1984), 14 C.C.C. (3d) 513 (Ont. H.C.).

Warriner v. *Kingston Penitentiary* (F.C.T.D. Dec. 7, 1990).

Brooks, Neil. **Police Guidelines: Pretrial Eyewitness Identification Procedures** (1983)

R. v. *MacDougall* (1987), 67 Nfld & P.E.I.R. and 206 A.P.R. 169 (P.E.I.S.C.).

R. v. *Quercia* (1990), 41 O.A.C. 305; 60 C.C.C. (3d) 380; 1 C.R. (4th) 385.

Disclosure by the Prosecution (Report 22, 1984)

R. v. *Doiron* (1985), 19 C.C.C. (3d) 350 (N.S.C.A.).

R. v. *Taillefer*, [1989] R.J.Q. 2023; 26 Q.A.C. 246.

Search and Seizure (Report 24, 1984)

Canadian Newspapers Co. v. *Attorney General of Canada* (1986), 28 C.C.C. (3d) 379 (Man. Q.B.).

Kourtessis v. *M.N.R.*, [1989] 1 W.W.R. 508; 30 B.C.L.R. (2d) 342; 44 C.C.C. (3d) 79 (S.C.).

R. v. *Coull and Dawe* (1986), 33 C.C.C. (3d) 186 (B.C.C.A.).

R. v. *Meyers* (1987), 78 A.R. 255; [1987] 4 W.W.R. 624; 58 C.R. 176 (Q.B.).

Homicide (Working Paper 33, 1984)

R. v. *Arkell* (1988), 30 B.C.L.R. (2d) 179; 64 C.R. (3d) 340 (C.A.).

R. v. *Paré*, [1987] 2 S.C.R. 618; 45 D.L.R. (4th) 546; 80 N.R. 272; 11 Q.A.C. 1; 38 C.C.C. (3d) 97.

R. v. *Vaillancourt*, [1987] 2 S.C.R. 636; 47 D.L.R. (4th) 399; 81 N.R. 115; 10 Q.A.C. 161; 68 Nfld & P.E.I.R. and 209 A.P.R. 282; 39 C.C.C. (3d) 118; 60 C.R. (3d) 289.

Investigative Tests (Working Paper 34, 1984)

R. v. *Amyot*, [1991] R.J.Q. 954; 30 Q.A.C. 140; 78 C.R. (3d) 129.

R. v. *Beare*; *R.* v. *Higgins* (1987), 56 Sask. R. 173; [1987] 4 W.W.R. 309; 34 C.C.C. (3d) 193; 57 C.R. (3d) 193 (C.A.).

R. v. Beare; *R.* v. *Higgins*, [1988] 2 S.C.R. 387; 55 D.L.R. (4th) 481; 88 N.R. 205; [1989] 1 W.W.R. 97; 71 Sask. R. 1; 45 C.C.C. (3d) 57; 66 C.R. (3d) 97.

Defamatory Libel (Working Paper 35, 1984)

Canadian Broadcasting Corp. v. *MacIntyre* (1985), 23 D.L.R. (4th) 235; 70 N.S.R. (2d) and 166 A.P.R. 129 (S.C.).

Damage to Property: Arson (Working Paper 36, 1984)

R. v. *Buttar* (1986), 28 C.C.C. (3d) 84; 52 C.R. (3d) 327 (B.C.C.A.).

Extraterritorial Jurisdiction (Working Paper 37, 1984)

Libman v. *The Queen*, [1985] 2 S.C.R. 178; 21 D.L.R. (4th) 174; 62 N.R. 161; 21 C.C.C. (3d) 206.

R. v. *Frisbee* (1989), 48 C.C.C. (3d) 386 (B.C.C.A.).

R. v. *Sunila* (1987), 35 C.C.C. (3d) 289 (N.S.S.C.).

Obtaining Forensic Evidence: Investigative Procedures in Respect of the Person (Report 25, 1985)

R. v. *Dyment*, [1988] 2 S.C.R. 417; 55 D.L.R. (4th) 503; 89 N.R. 249; 73 Nfld & P.E.I.R. and 229 A.P.R. 13; 45 C.C.C. (3d) 244; 66 C.R. (3d) 348; 38 C.R.R. 301.

The Legal Status of the Federal Administration (Working Paper 40, 1985)

Canada v. *Swanson* (F.C.A., May 22, 1991).

Oag v. *The Queen*, [1986] 1 F.C. 472; 23 C.C.C. (3d) 20 (T.D.).

Arrest (Working Paper 41, 1985)

Lord v. *Allison* (1986), 3 B.C.L.R. (2d) 300 (S.C.).

R. v. *Landry*, [1986] 1 S.C.R. 145; 26 D.L.R. (4th) 368; 65 N.R. 161; 25 C.C.C. (3d) 1.

Brooks, Neil, and Judy Fudge. **Search and Seizure under the Income Tax Act** (1985)

R. v. *McKinlay Transport*, [1990] 1 S.C.R. 627; 55 C.C.C. (3d) 530; 47 C.R.R. 151.

Swaigen, John, and Gail Bunt. **Sentencing in Environmental Cases** (1985)

R. v. *Gulf Canada* (1987), 2 C.E.L.R. (NS) 261 (N.W.T. Terr. Ct).

R. v. *Shamrock Chemicals* (13 Feb. 1989), St. Thomas (Ont. Prov. Ct) [unreported].

Recodifying Criminal Law: Volume 1 (Report 30, 1986)

R. v. *Sullivan* (1988), 31 B.C.L.R. (2d) 145; 43 C.C.C. (3d) 65; 65 C.R. (3d) 256 (C.A.).

R. v. *Vaillancourt*, [1987] 2 S.C.R. 636; 47 D.L.R. (4th) 399; 81 N.R. 115; 10 Q.A.C. 161; 68 Nfld & P.E.I.R. and 209 A.P.R. 282; 39 C.C.C. (3d) 118; 60 C.R. (3d) 289.

Electronic Surveillance (Working Paper 47, 1986)

R. v. *Duarte*, [1990] 1 S.C.R. 30; 65 D.L.R. (4th) 240; 103 N.R. 86; 53 C.C.C. (3d) 1; 74 C.R. (3d) 281.

R. v. *Wood* (1986), 26 C.C.C. (3d) 77 (Ont. H.C.).

Criminal Intrusion (Working Paper 48, 1986)

Holmes v. *The Queen*, [1988] 1 S.C.R. 914; 50 D.L.R. (4th) 680; 85 N.R. 21; 41 C.C.C. (3d) 497; 64 C.R. (3d) 97.

Hate Propaganda (Working Paper 50, 1986)

Canada (Canadian Human Rights Commission) v. *Taylor*, [1990] 3 S.C.R. 892; 75 D.L.R. (4th) 577; 117 N.R. 191.

R. v. *Andrews* (1988), 65 O.R. (2d) 161; 43 C.C.C. (3d) 193; 65 C.R. (3d) 320; 39 C.R.R. 36 (C.A.).

R. v. *Keegstra*, [1988] 5 W.W.R. 211; 87 A.R. 177; 43 C.C.C. (3d) 150; 65 C.R. (3d) 289; 39 C.R.R. 5 (C.A.).

R. v. *Keegstra* (1990), 117 N.R. 1; [1991] 2 W.W.R. 1; 61 C.C.C. (3d) 1; 1 C.R. (4th) 129 (S.C.C.).

Private Prosecutions (Working Paper 52, 1986)

Chartrand v. *Marx*, [1987] R.J.Q. 331; 55 C.R. (3d) 97 (S.C.).

Hébert v. *Marx*, [1988] R.J.Q. 2185 (S.C.).

R. v. *Kowalski* (1990), 107 A.R. 60; 57 C.C.C. (3d) 168 (P.C.).

Healy, Patrick. **"The Presumption of Innocence in the Draft Code of Substantive Criminal Law"** (unpublished, 1986)

R. v. *Chaulk* (1990), 119 N.R. 161; [1991] 2 W.W.R. 385; 62 C.C.C. (3d) 193; 2 C.R. (4th) 1 (S.C.C.)

"Options for Abortion Policy Reform: A Consultation Document" unpublished (1986)

Morgentaler v. *The Queen*, [1988] 1 S.C.R. 30; 44 D.L.R. (4th) 385; 82 N.R. 1; 37 C.C.C. (3d) 449; 62 C.R. (3d) 1.

Recodifying Criminal Law: Revised and Enlarged Edition of Report 30 (Report 31, 1987)

R. v. *Chaulk*, [1990] 3 S.C.R. 1303; 119 N.R. 161; [1991] 2 W.W.R. 385; 62 C.C.C. (3d) 193; 2 C.R. (4th) 1 (S.C.C.).

R. v. *Lacombe* (1990), 60 C.C.C. (3d) 489 (Que. C.A.).

Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.), [1990] 1 S.C.R. 1123; [1990] 4 W.W.R. 480; 56 C.C.C. (3d) 65; 77 C.R. (3d) 1; 48 C.R.R. 1.

Classification of Offences (Working Paper 54, 1986)

R. v. *Hart* (1987), 80 A.R. 321 (Prov. Ct).

Public and Media Access to the Criminal Process (Working Paper 56, 1987)

Southam v. *R.* (7 Aug. 1987) Ont. S.C. No. 58/87.

Southam Inc. v. *Mercier*, [1990] R.J.Q. 437 (S.C.).

Southam Inc. v. *The Queen*, [1988] R.J.Q. 307; 11 Q.A.C. 213; 42 C.C.C. (3d) 333; 62 C.R. (3d) 378.

Our Criminal Procedure (Report 32, 1988)

Cloutier v. *Langlois*, [1990] 1 S.C.R. 158; 105 N.R. 241; 53 C.C.C. (3d) 257; 74 C.R. (3d) 316.

Compelling Appearance, Interim Release and Pre-trial Detention (Working Paper 57, 1988)

R. v. *Lalli-Caffini*, [1989] R.J.Q. 161 (S.C.).

R. v. *Neill*, [1990] 2 W.W.R. 352; 60 C.C.C. (3d) 26 (Alta C.A.).

R. v. *Pearson*, [1990] R.J.Q. 2438; 59 C.C.C. (3d) 406, 79 C.R. (3d) 91 (C.A.).

Clifford, John C. **Inspection: A Case Study and Selected References** (1988)

Air Atonabee v. *Canada (Minister of Transport)* (1989), 27 F.T.R. 194; 37 Admin. L.R. 245.

Crimes against the Foetus (Working Paper 58, 1989)

Tremblay v. *Daigle*, [1989] 2 S.C.R. 530; 62 D.L.R. (4th) 634; 102 N.R. 81; 27 Q.A.C. 81.

Tremblay v. *Daigle*, [1989] R.J.Q. 1735; 23 Q.A.C. 241; 59 D.L.R. (4th) 609.

Robardet, Patrick. **"La jurisprudence récente en matière de justice naturelle et d'équité procédurale: un problème nouveau: la célérité administrative"** (unpublished, 1989)

Côté v. *Désormeaux*, [1990] R.J.Q. 2476 (C.A.).

APPENDIX H
RESEARCH CONSULTANTS

SUBSTANTIVE CRIMINAL LAW PROJECT

Co-ordinator: Professor Patrick J. FITZGERALD, *M.A.* (Oxon.); Barrister-at-Law (Lincoln's Inn); Professor, Department of Law, Carleton University; Member, Law Society of Upper Canada.

NAMES AND AREAS OF STUDY

BARNES, John, *B.A.* (Hons.), *B.C.L.* (Hons.) (Oxon.); Barrister-at-Law (Middle Temple). Sexual offences; pornography and prostitution; sentencing process.

CRIMINAL PROCEDURE PROJECT

Co-ordinator: Mr. Stanley A. COHEN, *B.A.* (Manitoba), *LL.B.* (York), *LL.M.* (Toronto); Member, Law Society of Manitoba.

NAMES AND AREAS OF STUDY

ASSOCIATION QUÉBÉCOISE DE DROIT COMPARÉ. Pierre-Gabriel JOBIN. Organization of two consultations with international experts in Criminal Procedure and Protection of Life.

CHASSE, Kenneth, *LL.B.* (Toronto); Member, Law Society of Upper Canada and Law Society of British Columbia. Sentencing process and the native offender.

COUGHLAN, Stephen G., *B.A.* (Ottawa), *M.A.*, *Ph.D.* (Toronto), *LL.B.* (Dalhousie); Member, Nova Scotia Barristers' Society. Controlling criminal prosecutions; trial within a reasonable time; code of criminal procedure.

DE MONTIGNY, Yves, *LL.L.*, *LL.M.* (Montreal), *M. Phil.* (Oxon.). Costs in criminal proceedings.

EDWARDS, J.J. Mark, *B.A.* (Trent), *LL.B.* (Queen's); Member, Law Society of Upper Canada and Law Society of Saskatchewan. Sentencing process and the native offender; code of criminal procedure.

GILMOUR, Glenn A., *B.A.*, *LL.B.* (Queen's); Member, Law Society of Upper Canada. Controlling criminal prosecutions; double jeopardy; code of criminal procedure.

HAMILTON, Keith R., *B.A.* (Victoria), *LL.B.* (British Columbia), *LL.M.* (London). Judge's Handbook.

KRONGOLD, Susan, *B.A.* (Hons.) (York), *LL.B.* (Ottawa), Dip. in Legislative Drafting (Ottawa); Member, Law Society of Upper Canada. Code of criminal procedure.

O'REILLY, James W., *B.A.* (Hons.) (Western), *LL.B.* (Osgoode), *LL.M.* (Ottawa); Member, Law Society of Upper Canada. Code of criminal procedure.

ORR, Patrick Hutchins, *B.A.*, *LL.B.* (Toronto), Dip. in Legislative Drafting (Ottawa); Member, Law Society of Upper Canada, Law Society of the Northwest Territories. Pretrial eyewitness identification.

POLANSKI, Margaux, Summer Student. Plain view doctrine.

POMERANT, David L., *B.A.*, *LL.B.* (Toronto); Member, Law Society of Alberta and Law Society of Upper Canada. Code of criminal procedure.

SCHIFFER, Marc Evan, *LL.B.* (Windsor), *LL.M.* (Toronto), *S.J.D.* (Toronto), *Ph.D.* (Cantab.); Member, Law Society of Upper Canada. Immunity from prosecution; sentencing procedure.

TOKAR, Janice J., *B.A.*, *LL.B.* (Manitoba), Dip. in Legislative Drafting (Ottawa); Member, Law Society of Manitoba. Code of criminal procedure.

VANDERVORT, Lucinda A., *B.A.* (Hons.) (Bryn Mawr), *M.A.*, *Ph.D.* (McGill), *LL.B.* (Queen's), *LL.M.* (Yale). Feminist perspective on police powers.

HUMAN RIGHTS

Special Adviser: Mr. Stanley A. COHEN, *B.A.* (Manitoba), *LL.B.* (York), *LL.M.* (Toronto); Member, Law Society of Manitoba.

MINISTER'S REFERENCE ON ABORIGINAL AND MULTICULTURAL CRIMINAL JUSTICE ISSUES

Project Director: Mr. Stanley A. COHEN, *B.A.* (Manitoba), *LL.B.* (York), *LL.M.* (Toronto); Member, Law Society of Manitoba. Aboriginal peoples and criminal justice; ethnic and religious minorities and criminal justice.

Names and Areas of Study

ANAND, Raj, *B.A.* (*Magna Cum Laude*) (Queen's), *LL.B.* (Dean's Key) (Toronto); Member, Law Society of Upper Canada. Visible minorities and access to justice.

BRIGGS, John E.S., *B.A.* (Ottawa), *LL.B.* (Kingston); Member, Nova Scotia Barristers' Society; Assistant Project Director. Aboriginal peoples and criminal justice; ethnic and religious minorities and criminal justice.

BRODEUR, Jean-Paul, *M.A.* (Phil.), *M.A.* (Criminology) (Montreal), *Ph.D.* (Phil.) (Paris); Professor, International Centre for Comparative Criminology, University of Montreal. Access to justice and equality of treatment.

BAYEFSKY, Anne F., *B.A.* (Hons.), *M.A.*, *LL.B.* (Toronto), *M. Litt.* (Oxon.); Member, Law Society of Upper Canada. International human rights law and the *Canadian Charter of Rights and Freedoms*.

PENTNEY, William F., *B.A.* (Queen's), *LL.B.*, *LL.M.* (Ottawa); Professor, University of Ottawa. Human rights in the federal sphere.

CHARTRAND, Paul L.A.H., *B.A.* (Winnipeg), *LL.B.* (Hons.) (Queensland), *LL.M.* (Saskatchewan); Assistant Professor, Department of Native Studies, University of Manitoba. Aboriginal and multicultural peoples and criminal justice.

COUGHLAN, Stephen G., *B.A.* (Ottawa), *M.A.*, *Ph.D.* (Toronto), *LL.B.* (Dalhousie); Member, Nova Scotia Barristers' Society; Assistant Project Director. Aboriginal peoples and criminal justice.

DOOB, Anthony, *B.A.* (Harvard), *Ph.D.* (Stanford); Director, Centre of Criminology, University of Toronto. Aboriginal peoples and criminal justice.

GILMOUR, Glenn A., *B.A.*, *LL.B.* (Queen's); Member, Law Society of Upper Canada. Aboriginal peoples and criminal justice.

GOLD, Marc E., *B.A.* (McGill), *LL.B.* (British Columbia), *LL.M.* (Harvard); Member, Law Society of Upper Canada, Director, Centre for Research on Public Law and Public Policy, York University. Criminal law and religious and cultural minorities.

GROSSMAN, Michelle G., *B.A.* (Western), Criminology (Fourth Year) (Ottawa), *M.A.* (Criminology) (Toronto). Aboriginal peoples and criminal justice.

HAMID, Kazi A., *LL.B* (Hons.) (Dhaka), Masters in comparative jurisprudence (Howard), *LL.D* (Ottawa). Criminal law issues involving religion and conscience; minority women and justice system; racism; ethnic data collection.

IAN B. COWIE AND ASSOCIATES. Ian B. COWIE. Aboriginal peoples and criminal justice.

INDIGENOUS BAR ASSOCIATION. Albert ANGUS, Marion BULLER, Dennis CALLIHOO, Leonard (Tony) MANDAMIN. *Criminal Code* and Aboriginal peoples.

JACKSON, Michael, *LL.B.* (London), *LL.M.* (Yale); Member, Law Society of British Columbia; Professor, University of British Columbia. Alternative dispute resolution in Aboriginal communities.

KAISER, H. Archibald, *B.A.* (Dalhousie), *LL.B.* (Dalhousie), *LL.M.* (London); Member, Nova Scotia Barristers' Society. Aboriginal and multicultural criminal justice issues.

NEMETZ CENTRE FOR DISPUTE RESOLUTION. Executive Director: Joseph M. WEILER. Alternative dispute resolution in Aboriginal communities.

MONTURE-OKANEE, Patricia A., *B.A.* (Hons.) (Western), *LL.B.* (Queen's); Assistant Professor, Dalhousie University. Aboriginal peoples and Canadian criminal law.

POMERANT, David L., *B.A.*, *LL.B.* (Toronto); Member, Law Society of Alberta and Law Society of Upper Canada. Aboriginal peoples and criminal justice; ethnic and religious minorities and criminal justice.

SOULLIÈRE, Nicole, *B.A.* (Sherbrooke), *M.A.* (Montreal). Access to justice and equality of treatment.

STENNING, Philip C., *B.A.* (Cantab.), *LL.M.* (Osgoode), *S.J.D.* (Toronto); Associate Professor, Centre of Criminology, University of Toronto. Aboriginal peoples and criminal justice.

TURPEL, Mary Ellen, *B.A.* (Carleton), *LL.B.* (Osgoode), *LL.M.* (Cantab.), *S.J.D.* (Harvard); Associate Professor of Law, Dalhousie University. Aboriginal peoples and criminal justice.

ZIMMERMAN, Susan V., B.A. (*cum laude*) (Bryn Mawr), *B.C.L.* (Hons.) (McGill), *LL.B.* (Hons.) (McGill); Member, Quebec Bar and Law Society of Upper Canada. Aboriginal peoples and criminal justice; ethnic and religious minorities and criminal justice.

PROTECTION OF LIFE PROJECT

Co-ordinator: Dr. Burleigh TREVOR-DEUTSCH, *B.Sc.*, *M.Sc.* (McGill), *Ph.D.* (Carleton), *LL.B.* (Ottawa); Member, Law Society of Upper Canada.

Names and Areas of Study

BERTRAND, Jean-François, *LL.L.* (Ottawa), *LL.M.* (Laval); Member, Quebec Bar. Right to medical services and distribution of resources.

BRAULT, Jean-François, *LL.L.* (Ottawa), *D.M.A* (Dalhousie); Member, Quebec Bar. Contaminated lands.

BRUN, Henri, *B.A.*, *LL.L.*, *L. ès L.* (Laval), *D.E.S.* Law, *LL.D.* (Paris); Member, Quebec Bar. Medical screening in the workplace; federal laws and charters of rights.

BRYDEN, Philip Lloyd, *B.A.* (Dalhousie), *LL.B.* (Oxon.), *LL.B.* Civil Law (Oxon.), *LL.M.* (Harvard). Right to medical services and distribution of resources.

CRANE, Bruce Peter, *B. Comm.* (British Columbia). Right to medical services and distribution of resources.

GOLD, Marc E., *B.A.* (McGill), *LL.B.* (British Columbia), *LL.M.* (Harvard); Member, Law Society of Upper Canada. Medically assisted procreation.

GRANDBOIS, Maryse, *LL.L.* (Montreal), *D.E.A.*, *D.LL.* (Montpellier); Member, Quebec Bar; Professor, Université du Québec à Montréal. Law of oceans.

HODGSON, Margaret, *B.A.* (Carleton), *M.L.S.* (Toronto), *LL.B.* (Ottawa); Member, Law Society of Upper Canada. Patenting life forms.

JONES, Derek J., *B.A.* Political Economy (Yale), *J.D.* (Harvard); Member, Maine and Massachusetts Bars. Procurement and transfer of human tissues and organs.

LAJOIE, Andrée, *B.A.* Arts, *LL.L.* (Montreal), *B.A.* Political Science, *M.A.* Political Science (Oxon.); Member, Quebec Bar. Right to medical services and distribution of resources.

MARCOUX, Anne, *LL.B.* (Laval), *LL.M.* (York); Member, Quebec Bar. Medically assisted procreation.

MOLINARI, Patrick A., *LL.L.*, *LL.M.*, *B.A.* Political Science (Montreal); Professor and Associate Dean, University of Montreal. Non-criminal control of abortion; towards a national biomedical ethics council.

MORNEAULT, Brigitte, *LL.B.* (Montreal). Medically assisted procreation.

PREUS, Marilyn, *B.Sc.* Biology (Edmonton), *M.Sc.* Human Genetics (McGill), *Ph.D.* Human Genetics (McGill), *LL.B.* (McGill); Fellow, Canadian College of Medical Geneticists. Allocation of scarce resources.

QUILLINAN, Henry, *LL.B.* (Montreal); Member, Quebec Bar. Right to medical services and distribution of resources.

STOCK, Bena Wendy, *B.A.* Psychology (McGill). Right to medical services and distribution of resources.

SWAIGEN, John, *B.A.* (Toronto), *LL.B.*, *LL.M.* (York); Member, Law Society of Upper Canada. Due diligence in environmental law.

ADMINISTRATIVE LAW PROJECT

Co-ordinator: Dr. Patrick G. ROBARDET, *LL.L.* (Ottawa), *LL.L.*, *LL.M.* (Reims), *LL.D.* (Laval); Member, Quebec Bar.

Names and Areas of Study

BLACKMAN, Susan, *B.Sc.* (Waterloo), *LL.B.* (Calgary), *LL.M.* (British Columbia); Research Associate, Canadian Institute of Resources Law. Intergovernmental agreements in the Canadian Regulatory Process.

CHOMYN, Beverley A., *B.Sc.* (Hons.) (Queen's), *M.Sc.* (Carleton), *LL.B.* (Dalhousie); Member, Law Society of Upper Canada. Contaminated land.

CLIFFORD, John C., *B.A.* (Western Ontario), *LL.B.* (Dalhousie); Member, Nova Scotia Barristers' Society and Law Society of Upper Canada. Policy implementation; administrative policing.

COHEN, David S., *B.Sc.* (McGill), *LL.B.* (Toronto), *LL.M.* (Yale); Professor, Faculty of Law, University of British Columbia. Crown liability.

CRANE, Brian A., Q.C., *B.A.*, *LL.B.* (British Columbia), *M.A.* (Columbia); Member, Law Society of Upper Canada. Limitation of actions in the federal sphere.

DICK, Linda C., *B.A.* (Hons.) (Alberta), *LL.B.* (British Columbia). Refugee determination process.

GOODWIN-GILL, Guy S., *B.A.* (Hons.), *M.A.*, *D.Phil.* (Oxon.); Member, Inner Temple; Professor, Department of Law, Carleton University. Refugee determination process.

HEALY, Patrick, *B.A.* (Hons.) (Victoria), *B.C.L.* (McGill), *LL.M.* (Toronto); Member, Quebec Bar; Lecturer, Faculty of Law, McGill University. Regulatory offences.

MacLAUCHLAN, H. Wade, *B.A.* (Prince Edward Island), *LL.B.* (New Brunswick), *LL.M.* (Yale); Dean, Faculty of Law, University of New Brunswick. Law in the administration: practices, perspectives and prospects.

MARVIN, Charles A., *B.A.* (Kansas), *J.D.*, *M.Comp.L.* (Chicago); Member, Illinois and Georgia Bars; Professor, College of Law, Georgia State University. Ombudsman.

MULLAN, David J., *LL.B.*, *LL.M.* (Victoria), *LL.M.* (Queen's); Member, New Zealand Bar; Professor, Faculty of Law, Queen's University. Federal Court reform.

OUIMET, Anne, *LL.B.* (Montreal); Member, Quebec Bar. Refugee determination process.

REID, Alan D., Q.C., *B.A.*, *B.C.L.* (New Brunswick), *LL.M.* (Yale); Member, Law Society of New Brunswick and Law Society of Upper Canada. Federal limitations.

SAUNDERS, J. Owen, *B.A.* (St. Francis Xavier), *LL.B.* (Dalhousie), *LL.M.* (L.S.E.); Director, Canadian Institute of Resources Law; Adjunct Associate Professor, Faculty of Law, University of Calgary. Intergovernmental agreements in the Canadian regulatory process.

SMITH, Heather, *B.A.* (Hons.) (King's College), *LL.B.* (Toronto). Refugee determination process.

WEBB, Kernaghan R., *LL.B.* (Calgary), *LL.M.* (Ottawa); Lecturer, Faculty of Law (Common Law), University of Ottawa. Implementation of public policy and incentives; environmental law.

APPENDIX I
COMMISSION PERSONNEL OTHER THAN RESEARCH CONSULTANTS

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